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JOURNAL

OF THE

COURT OF IMPEACHMENT.

The State of Tennessee

VS.

NATHANIEL W. WILLIAMS.

F. S. HEISKELL & A. A. HALL,
PRINTERS TO THE STATE.

"KNOXVILLE REGISTER" OFFICE.
F. S. HEISKELL, PRINTER.

1829.

JOURNAL

OF THE

COURT OF IMPEACHMENT.

Articles of Impeachment exhibited by the House of Representatives, in the name of the State of Tennessee and of the people of said state, against Nathaniel W. Williams, judge of the third judicial circuit in and for said state, and of the circuit courts of said state.

Whereas, the said Nathaniel W. Williams, was on the twenty third day of November, in the year of our Lord, one thousand eight hundred and nineteen, constitutionally and legally elected, judge of the third judicial circuit of the State of Tennessee, and of the circuit courts of said state, with all the rights, privileges and emoluments, power, obligations and duties, pertaining to his office; was duly commissioned, took the several oaths prescribed by the Constitution and the laws of the land, to be taken by him, in manner and form as prescribed; and among others, this oath. "I do solemnly swear that I will support the Constitution of the United States, and the Constitution of the State of Tennessee, and that I will administer justice without respect to persons, doing equal right to the poor and to the rich; and that I will faithfully perform and discharge all the duties incumbent on me, as a circuit judge, according to the best of my skill and ability—so help me God." Forthwith entered upon the exercise of his office, and the discharge of the duties thereof, and from thence to the present time; but becoming negli-

gent and capricious, and unmindful of the solemn duties of his office, and of the obligations by which, faithfully and impartially to the best of his skill and ability, to discharge the duties enjoined on him as judge aforesaid—he has in his judicial capacity, unlawfully been guilty of the high crimes and misdemeanors, and misbehavior, enumerated and charged in the following articles and specifications:—

ARTICLE 1st.

He has capriciously, wilfully and unlawfully, and in violation of his said oath of office, requiring him, faithfully to perform and discharge all the duties incumbent on him as a circuit judge, to the best of his skill and ability, failed and refused, to hold circuit courts, which it was his duty to hold, to the disappointment and great damage to parties to suits, pending in said courts, and in a way tending to bring the administration of the laws of the land into disrepute.

SPECIFICATION 1st.

On the second Monday of March, one thousand eight hundred and twenty four, a circuit court was by law, to be holden for the county of Overton, at the court house, in said county, and there were, then depending and to be tried and determined in said court, two prosecutions in the name of the State of Tennessee against John Moore for feloniously passing counterfeit bank notes. One prosecution of the State against James Payne for highway robbery; and many civil suits both in law and equity; and it was legally the duty of said judge to hold said court as judge thereof, until the business thereof should be finished, or, until it became necessary to adjourn, for the purpose of holding some other circuit court; yet, the said judge, did not hold said court, but negligently, capriciously, wilfully and unlawfully failed and refused to hold

said court, to the disappointment and great damage of parties, then and there attending.

ARTICLE 2d.

While presiding as judge, during the transaction of business, before him in open court, he has been so careless, capricious and inattentive to business, that he has unlawfully and contrary to his duties, and in violation of his said oath of office, which requires of him, a faithful performance and discharge of all the duties incumbent upon him as a circuit judge, to the best of his skill and ability, fallen to sleep and remained so for a long time, to the damage of parties litigant, and to the great scandal of public justice.

SPECIFICATION 1st.

A circuit court was holden by and before the said judge, in and for the county of Marion, on the first Monday of October, one thousand eight hundred and twenty six; when and where he the said judge presiding, in open court, and while Hopkins L. Turney, an attorney of that court was arguing before him, so presiding, a certain civil suit, concerning an Indian reservation, which suit then and there was, and had been on trial for one day, he the said judge, unmindful of the duties of his office and his obligation to perform them faithfully and impartially, to the best of his skill and ability, did carelessly, negligently and unlawfully, go to sleep for the space of one hour. Waking from his sleep, enquired, what suit it was, and being told, by said attorney, said he was related to some of the parties and could not sit on that case.

SPECIFICATION 2d.

A circuit court was holden by and before said judge, in and for the county of White, on the fourth Monday of February, eighteen hundred and twenty nine, when and where, he the said judge presiding as such, in open court, on a trial of an action of ejectment, and during the argument of

counsel, did carelessly, negligently and unlawfully go to sleep; continue asleep two hours; and waking have the argument gone over.

SPECIFICATION 3d.

A circuit court was holden by and before the said judge, in and for the county of White, at the court house of said county, on the fourth Monday of August, 1828, when and where, he the said judge, presiding in open court, on the trial of a suit wherein the lessee of Thomas T. Thompson's heirs against Thomas Little and Holliday, then and there had before him, did carelessly, negligently and unlawfully go to sleep, continue asleep two hours, and waking, have the argument gone over again.

SPECIFICATION 4th.

A circuit court was holden by and before said judge, in and for the county of Smith, on the second Monday of October, eighteen hundred and twenty-eight, when and where, said judge, presiding in open court, on the trial of William Foutch, on an indictment of the state against him for murder, which cause was then and there tried before him; unmindful of the high importance of the case, of the responsible duties that were incumbent on him, and of his solemn obligation to perform them faithfully, impartially, and to the best of his skill and ability, did carelessly, negligently and unlawfully go to sleep and continue asleep for two hours.

ARTICLE 3d.

The said judge unmindful of his obligation to administer justice without respect to persons, and faithfully and impartially to discharge the duties incumbent on him as such, has in his official capacity administered the law partially; has unlawfully indulged undue prejudice against parties to causes tried by him, and attornies who practice as such in the courts of his circuit, against their clients and client's causes, and unlawfully, partially us-

ed and exercised great favor towards other parties to causes tried by him, and attornies of said courts, their clients and their client's causes; and has unlawfully adjudged and ordered in causes in the courts of his circuit unfaithfully, partially and with respect to persons.

SPECIFICATION 1st.

At a circuit court begun and held for the county of Smith, at the court house thereof, on the second Monday of April, eighteen hundred and twenty-five, by and before the said Nathaniel W. Williams, judge as aforesaid, the cause of John Denn lessee of James Henderson, against Sampson Williams and Cox, pending in said court, was during that term tried by a jury before said judge; when from the evidence in the cause, a question of law became material to be decided on the trial, and was decided by said judge, in his charge to the jury, namely; whether possession of the land in controversy taken and continued by the defendants, for the period of seven years next before the commencement of the suit, under a legal title, would protect them against the action of the plaintiff; or whether the action of the plaintiff was in that case barred, inasmuch as the lessor of the plaintiff claimed title to the land in dispute, under a grant covering the same, which had been issued much less than seven years before the commencement of the suit; but which was founded on an entry for the same land, made much more than seven years before the suit was brought; when and where the said judge erroneously, improperly and from prejudice and ill will towards the said Sampson Williams, one of the defendants in said suit, did amongst other things in regard to said question of law, decide, and to the jury then trying said cause, declare his opinion to be, "that a man should not be barred, unless he had a legal right to oppose to his adversary, and that an entry

is not to be barred by the statute of limitations;" thereby determining the said question of law against the defendants, knowing that the same ought to have been decided in their favor. And at a circuit court begun and held in the county of Franklin, at the court house in said county, on the second Monday of July, eighteen hundred and twenty-five, by and before the said judge, the cause of John Doe, lessee of Frederick A. Ross, against Leroy May, pending in said court, was during that term, tried by a jury before said judge, when, from the evidence in said last mentioned cause, the same question of law, which is above stated, became material to be decided on the trial thereof, which had arose and had been decided, in manner aforesaid in the cause first above mentioned. The evidence, in the last mentioned cause presented to the said judge, the same question for his decision, which he had in the first mentioned cause decided; when neither the law nor the adjudication thereof had, in the meantime been in any manner changed, or differently understood; when and where the said judge, not being uninfluenced by prejudice, partiality, or ill will, to either of the parties, amongst other things, in regard to said question of law, did in his charge to the jury trying said last mentioned cause, decide and declare, "that the statute of limitations would operate in favor of a possession, as well against a claimant who held by an entry only, as against him who held by grant;" thereby determining the said question of law in the last mentioned cause in favor of the defendants.

SPECIFICATION 2d.

A circuit court in and for the county of Franklin, was begun and holden by and before the said judge, on the second Monday of January, eighteen hundred and twenty-nine, and two causes, the first Charles Neighbours against Henry Hereford

and others, and the next, Nancy Brewer against Sherrod Williams, then and there stood for trial on the docket of said court. Both were called for trial in order, on the same day, and in each case, the attorney for the plaintiff, requested of the court that his client's cause be passed over for the present, assigning the same reasons, but said judge, who might have been expected to decide alike in like cases, being inimical to Hopkins L. Turney, who was, and then and there appeared attorney for plaintiff in the first of the aforesaid cases, an attorney for defendant in the second case, and being influenced by an inordinate partiality for Micah Taul, who then and there appeared attorney for the adverse party in each case, did wilfully, unjustly, partially and unlawfully, refuse the request of plaintiff's attorney in the first named case; subject him to a non-suit, and grant the request of the plaintiff's attorney, in the second named case; threatening if the opposite attorney did not consent, he would adjourn court, and by that means enforce it; and did accordingly adjourn court, and thereby did enforce it.

ARTICLE 4th.

On the twenty third day of July, eighteen hundred and twenty-eight, in the county of Franklin, at a circuit court begun and holden, in and for said county, at the court house thereof, before the said judge, then and there presiding, a paper writing, under seal, purported to be a deed of conveyance from Thomas P. Taul and Caroline P. Taul, who was the wife of said Thomas P. Taul, for a part of a lot or piece of land lying in the county of Davidson, and town of Nashville, which land was in right of the said wife, to Benjamin Deckerd, and purporting to be signed by said Thomas P. Taul, and sealed with his seal, and purporting to be signed by said Caroline P. Taul, and sealed with her seal; was by the said Thomas P. Taul, then

and there, in said open court, before said judge, presiding, produced and acknowledged, but in a manner to be known by him and said judge and as few others as possible. Whereupon, he the said judge, presiding as aforesaid, then and there, wilfully, falsely, corruptly and unlawfully, made upon the back of said paper writing, purporting to be a deed, the following false certificate, to wit:—

"State of Tennessee, Franklin County.
"*Franklin Circuit Court, July Term*, 1828.

"July 23d, 1828.—The foregoing deed of conveyance from Thomas P. Taul and Caroline P. Taul his wife, was this day signed, sealed, delivered and duly acknowledged, in open court, by the said Thomas P. Taul and Caroline P. Taul, to be their act and deed, for the purposes therein named. The said Caroline, having been first privily examined by me separate and apart from her husband, and I first satisfied that she executed the same, of her own free will and accord, without the threats or persuasions of her husband; wherefore, the same is admitted of record, and ordered to be certified for registration accordingly.

"In testimony whereof I have hereunto affixed my hand and seal in open court, this 23d July, 1828.

NATHANIEL W. WILLIAMS, seal."

And then and there, as judge presiding, wilfully, corruptly, falsely and unlawfully, did cause to be entered, as a minute or record of said court, in the record book of said court, an entry in the following words, to wit:—

"A deed of conveyance from Thomas P. Taul and Caroline P. Taul his wife, to Benjamin Deckerd, for a lot of ground No. 89, situate in the town of Nashville, was this day, in open court, signed, sealed, delivered and duly acknowledged, by the said Thomas P. Taul and Caroline P. Taul, to be their act and deed, for the purposes therein men-

tioned. The said Caroline P. Taul, having first been privily examined by the court, separate and apart from her said husband; she then declaring, that she executed the deed aforesaid, of her own free will and accord, without the threats or persuasions of her husband, and the court being satisfied thereof; whereupon, the same is admitted of record, and ordered to be certified for registration."

Which said certificate upon the back of said deed, and which minute or record of said court, as above recited, are both false, in this, that the said deed was not on the said alledged day, nor at any other time, in open court, signed, sealed, delivered or duly acknowledged, by her the said Caroline P. Taul, for the purposes therein named; and in this, that the said Caroline P. Taul, had not been privily examined by the court, separate and apart from her husband, and that she did not declare, to the court, upon a privy examination, or in any way, that she executed said deed, of her own free will and accord, without the threats or persuasions of her husband; and in this, that she was not present in court, nor in any manner attended upon the court, on that day, or at any other time of the term thereof, but was entirely absent therefrom. And then and there, as judge presiding, as aforesaid, did wilfully, corruptly and unlawfully, prevent the said minute or entry, upon the record, from being read in open court, at any time after the same was placed upon the record, and did adjourn the court for that term, without having the same read in open court, contrary to his duty as prescribed by act of Assembly. All which matters and things, charged in this article, the said judge, presiding in said court, wilfully, corruptly and unlawfully, did with intent to injure, wrong and defraud said Carolina P. Taul and her heirs at law, from undue partiality, towards the said Thomas P.

Taul, and a willingness to promote his interest, and from a neglect and unlawful disregard of his duties and obligations, by means whereof, and by a deed of conveyance procured by said Thomas P. Taul, to himself and said Caroline P. Taul, from said Benjamin Deckerd, without any consideration, on the 24th day of July, 1828, for the same lot or piece of ground of the value of ten thousand dollars, and the certificates endorsed on said deeds and the registration of which deeds, the said Caroline P. Taul and her heirs at law, were falsely, fraudulently and corruptly, according to the forms of law, divested of the legal title to said lot and piece of ground; and the same has, in legal form, become vested in the said Thomas P. Taul and his heirs at law.

ARTICLE 5th.

A circuit court for the county of Franklin, was holden in said county, at the court house thereof, on the second Monday of July, eighteen hundred and twenty-eight, by the said Nathaniel W. Williams as judge as aforesaid, and during said court, to wit, on the 23d day of said July, Thomas P. Taul produced in said open court, a deed of conveyance from himself and Caroline P. Taul his wife, for part of a lot or piece of land, lying in Davidson county, in the town of Nashville, to Benjamin Deckard, and acknowledged the same to be his act and deed for the purposes therein named; whereupon, unmindful of his duties as a circuit judge, and controlled by partiality towards the said Thomas P. Taul, he, the said judge presiding, falsely, willingly, wilfully, knowingly and unlawfully caused to be entered of record, by the clerk of said court, in the record book or minutes of said court, in relation to said deed, the following false entry and record, to wit:

"A deed of conveyance from Thomas P. Taul and Caroline P. Taul his wife, to Benjamin Deck-

ard, for a lot of ground, No. 89, situate in the town of Nashville, was this day in open court, signed, sealed, delivered and duly acknowledged by the said Thomas P. Taul and Caroline P. Taul, to be their act and deed, for the purposes therein mentioned—she, the said Caroline P. Taul having first been privily examined by the court, separate and apart from her said husband; she then declaring that she executed the deed aforesaid of her own free will and accord, without the threats or persuasions of her husband; and the court being satisfied thereof—Whereupon the same is admitted of record and ordered to be certified for registration."

And which said entry is false in this, that the said deed was not, on that or any other day, in open court, signed, sealed, delivered, or duly acknowledged by the said Caroline P. Taul to be her act and deed for the purposes therein named. And in this, that the said Caroline P. Taul had not been privily examined by said court, separate and apart from her said husband; and in this, that she did not declare that she executed the aforesaid deed without the threats or persuasions of her husband.—And afterwards, to wit, on the morning of the 24th day of said July, he the said judge, unmindful of the true nature of his obligation, and with partiality and favor to said Thomas P. Taul, did then and there, unlawfully fail and refuse to have read in open court, the minute or entry of said record, and so failing and refusing, adjourned said court for that term.

ARTICLE 6th.

On the second Monday of July, eighteen hundred and twenty-eight, in the county of Franklin, at a circuit court begun and held in and for said county, at the court house thereof, before said judge, then and there presiding, and continued to be holden until the twenty-fourth day of said July, a paper writing under seal purporting to be a deed

of conveyance from Thomas P. Taul and Caroline P. Taul (who was the wife of the said Thomas P. Taul) for a part of a lot or piece of land lying in the county of Davidson and town of Nashville, (which land was in right of said wife,) to Benjamin Deckard, purporting to be signed by Thomas P. Taul sealed with his seal, and by Caroline P. Taul, sealed with her seal, was by said Thomas P. Taul, then and there in said open court, before said judge presiding, produced and acknowledged by him the said Thomas P. Taul; but in a manner to be known by him, and the said judge, and as few others as possible; whereupon he, the said judge presiding as aforesaid, not being sufficienly cautious and circumspect, did wilfully, knowingly, falsely and unlawfully make the following false certificate, upon the back of said deed, to wit:

"STATE OF TENNESSEE, FRANKLIN COUNTY.
Franklin Circuit Court, July term, 1828.

JULY 23d, 1828.—The foregoing deed of conveyance from Thomas P. Taul and Caroline P. Taul his wife, was this day signed, sealed, delivered and duly acknowledged in open court, by the said Thomas P. Taul and Caroline P. Taul, to be their act and deed for the purposes therein named; the said Caroline having been first privily examined by me, separate and apart from her husband, and I first satisfied that she executed the same, of her own free will and accord, without the threats or persuasions of her husband; wherefore the same is admitted of record, and ordered to be certified for registration accordingly.

In testimony whereof I have hereunto affixed my hand and seal in open court, this 23d July, 1828. NATHANIEL W. WILLIAMS, SEAL."

And not being sufficiently cautious and circumspect in administering law, affecting the rights of others, did wilfully, knowingly, falsely and unlawfully, cause to be made by the clerk of said

court, upon the back of said deed, the following false certificate, to wit:

"STATE OF TENNESSEE, FRANKLIN COUNTY.
Franklin Circuit Court, July term, 1828.

JULY 23d, 1828.—The foregoing deed of conveyance from Thomas P. Taul and Caroline P. Taul his wife, to Benjamin Deckerd, was this day in open court, signed, sealed, delivered and acknowledged by the said Thomas P. Taul and Caroline P. Taul, to be their act and deed for the purposes therein named; the said Caroline P. Taul having been first privily examined by the court, separate and apart from her said husband, she then declaring that she executed the deed aforesaid of her own free will and accord, without the threats or persuasions of her husband; and the court being satisfied thereof; wherefore the same is admitted of record and ordered to be certified for registration.

In testimony whereof I have hereunto subscribed my name, and affixed my private seal, having no official seal of office, this 23d July, 1828.

TEST—

(SEAL.) JONATHAN SPYKER, Clerk.
By P. S. DECKERD, D C."

And not being sufficiently cautious and circumspect in administering law, affecting the rights of others, did wilfully, knowingly, falsely and unlawfully cause to be made by the clerk of said court, upon the minute or record book of said court, the following false minute or record, to wit:

"STATE OF TENNESSEE FRANKLIN COUNTY.
Circuit Court, July term, 1828.

WEDNESDAY, 23d JULY, 1828.—A deed of conveyance from Thomas P. Taul and Caroline P. Taul his wife, to Benjamin Deckerd, for a lot of ground, No. 89, situate in the town of Nashville, was this day in open court, signed, sealed, delivered and duly acknowledged by the said Thomas

P. Taul and Caroline P. Taul, to be their act and deed for the purposes therein mentioned; she, the said Caroline P. Taul having been first privily examined by the court, separate and apart from her said husband, she then declaring that she executed the deed aforesaid, of her own free will and accord, without the threats or persuasions of her husband; and the court being satisfied thereof—whereupon the same is admitted of record and ordered to be certified for registration."

Which said several certificates and said minute or record as above recited, are respectively false in this, that the said deed was not, on that or any other day or time, in open court, signed, sealed, delivered or duly acknowledged by the said Caroline P. Taul, to be her act and deed for the purposes therein named; and in this, that the said Caroline P. Taul had not been privily examined by the court, separate and apart from her husband, and that she did not declare to the court upon a privy examination, that she executed the said deed of her own free will and accord, without the threats or persuasions of her husband; and in this, that she was not in court, nor in any manner attending the same, either on that day, for months before, or ever after 'till her death. And then and there as judge presiding as aforesaid, did wilfully and unlawfully prevent the said minute or entry upon the record from being read in open court at any time after the same was placed upon the record, and did adjourn the court for that term, without having the same read in open court, contrary to his duty as prescribed by act of assembly. All which matters and things charged in this article, the said judge, presiding in said court, wilfully, knowingly and unlawfully did, to the great injury of the said Caroline P. Taul and her heirs at law, from an undue partiality to the said Thomas P. Taul, and willingness to promote his interest, and

from a neglect and an unlawful disregard of his duties and obligations; by means whereof, and by a deed of conveyance, procured by said Thomas P. Taul, to himself and said Caroline P. Taul, from said Benjamin Deckerd, without any consideration, on the 24th day of July, 1828, for the same lot or parcel of ground, of the value of ten thousand dollars, and the certificates endorsed on said deeds, and the registration of which deeds, the said Caroline P. Taul and her heirs at law, were falsely and fraudulently, according to the forms of law, divested of the legal title to said lot or piece of ground; and the same has in legal form, become vested in the said Thomas P. Taul and his heirs at law.

All and every of which aforesaid high crimes and misdemeanors, the House of Representatives, of the General Assembly of Tennessee say, the said Nathaniel W. Williams, judge of the 3rd judicial circuit as aforesaid, has committed and been guilty of, to the evil and pernicious example of all others, in like cases offending, and against the peace and dignity of the state.

And the said House of Representatives of the General Assembly of Tennessee, by protestation, saving to themselves the right of exhibiting, at any time hereafter, any further articles, or other accusations or impeachments, against the said Nathaniel W. Williams, and also of replying to his answers which he may make unto the said articles, or any of them, and offering proof to all and every of the aforesaid articles, and to all and every other articles of impeachment or accusation which may be exhibited by them, as the case may require, do demand that the said Nathaniel W. Williams, judge of the 3d judicial circuit as aforesaid, may be put to answer the said articles of crimes and misdemeanors, and that such proceedings, examinations, trials and judgments may be

thereupon had and given, as are agreeable to law and justice and the constitution of the State of Tennessee.

HOPKINS L. TURNEY,
WILLIAM BRADY,
A. W. OVERTON,
R. C. FOSTER, Jr.
F. W. HULING,
A. L. MARTIN,
R. G. DUNLAP.
} MANAGERS.

House of Representatives, October 27, 1829—Read and unanimously concurred in.

EPHRAIM H. FOSTER, Speaker
of the House of Representatives.

ATTEST—THO: J. CAMPBELL, Clerk
of the House of Representatives.

SENATE CHAMBER, OCTOBER 31, 1829.

The Senate at the hour of 11 o'clock, formed themselves into a court, on the trial of Nathaniel W. Williams, Esq. judge of the 3d judicial circuit, on the articles of impeachment, exhibited against him, by the House of Representatives.

The following oath was administered by E P. Connell, Esq. a justice of the peace for Davidson county, to the honorable president and gentlemen of the court, with the exception of Mr. Smith and Mr. Campbell, the first being absent and the latter excusing himself for the present, to wit:—

"You and each of you, do solemnly swear, that in all things appertaining to the trial of the impeachment of Nathaniel W. Williams, you will do impartial justice, according to law and evidence; so help you God."

And the following oath was administered to the seargeant-at-arms and clerk, to wit:—

"You and each of you, do solemnly swear, that as officers of this court of impeachment, you will faithfully perform the duties pertaining to your offices respectively, to the best of your skill and abilities; so help you God."

Ordered, That the seargeant-at-arms forthwith inform the managers on the part of the House of Representatives, and also the defendant, that the court are now organized, and are ready to proceed in said trial. After the lapse of a few minutes the managers, and also the respondent and his counsel appeared, and were invited to seats within the bar.

Whereupon,

The honorable Newton Cannon, president of the court, addressed the defendant in the following words:

"Judge Williams—you have been invited before the Senate of the State of Tennessee, acting in the

capacity of a court of impeachment, on the articles of impeachment preferred against you by the House of Representatives, as one of the judges of our state, a copy of which was furnished you on a previous day.

The Senate as a court of impeachment, are now ready to proceed in the investigation of said charges, and to hear any answer you may think proper to make by yourself or counsel, and are willing to extend to you all the rights and privileges secured by the Constitution and laws of our state."

Whereupon,

William L. Brown, Esq. addressed the court, in behalf of the defendant, and moved that he should be allowed until Tuesday next, 2 o'clock, P. M. to plead to said articles of impeachment, and the managers on the part of the House of Representatives agreeing thereto, it was ordered by the court that said request be granted, to which time the court adjourned.

SENATE CHAMBER, NOVEMBER 3, 1829.

TUESDAY, 2 O'CLOCK, P. M.

The hour of adjournment having arrived, the Senate again formed themselves into a court, on the trial of Nathaniel W. Williams, Esq. judge of the 3d judicial circuit

On motion of Mr. Littlefield,

Ordered, That the seargent-at-arms forthwith inform the defendant, that the court are now ready to proceed in this trial; and also, that the clerk inform the House of Representatives, that the court are now ready to proceed in the trial of the said Nathaniel W. Williams; and request the attendance of the managers on their part, to conduct

and prosecute the articles of impeachment by them preferred.

Whereupon,

After the lapse of a few minutes, the managers on the part of the House of Representatives, and also the defendant and his counsel appeared, and were invited to seats within the bar of the Senate.

Mr. Smith, one of the members of the court, who was absent at the last meeting, took the oath which was administered to the other members of this court, and which may be seen on the 1st page of this journal.

Mr. Campbell submitted the following communication:

To the president and senate sitting as a court, on articles of impeachment, exhibited against Nathaniel W. Williams, judge of the 3d judicial circuit of the State of Tennessee.

The undersigned begs leave to state, that Caroline P. Taul, the person mentioned in said articles of impeachment and who is now deceased, was the sister of his wife—that a suit in chancery has grown out of the proceedings mentioned in the 4th, 5th and 6th articles of said impeachment, in which the same questions are involved as are involved in said articles—and in which suit the undersigned is one of the complainants, and judge Williams one of the defendants—that the undersigned has formed and expressed an opinion in relation to the matters involved in said articles—that the proceedings mentioned in said articles, have produced a personal hostility between the said judge and himself. Under these circumstances the undersigned begs leave to decline being a member of said court, and hopes that the Senate will receive this as a sufficient reason for so doing.

JAMES CAMPBELL.

James Campbell makes oath that the matters

and things contained in the foregoing statement, are true to the best of his knowledge and belief.

JAMES CAMPBELL.

Sworn to before me,

WILL: LYTLE, J. P.

The reasons contained in the foregoing communication, being deemed sufficient, it was ordered that Mr. Campbell be excused from sitting as a member of this court.

On motion of Mr. Huntsman,

The following rules were adopted for the government of the court.

RULE 1st. No member shall argue any point before the court, but may, when called upon for a decision, state the reasons of his opinion or deliver them in writing.

2d. When any decision is made by the court, the president shall announce the result.

3d. Should the counsel for the accused, or those on the part of the state, deviate in argument from the point before the court, it shall be the duty of the president or any member to call him to order.

4th. All motions made by the counsel for the accused, as well as by those on the part of the state, shall be entered of record.

5th. No decision shall be announced, unless concurred in by a majority of the court.

6th. The president shall collect and deliver the opinions of the court and decide the points of order between the counsel of the accused and the state, or may submit the same to the court for determination. The opinion of each member shall be called for and given separately if required, and if it is desired by any member, that the ayes and noes may be taken on any question, the clerk shall take the list around to the members, for the purpose of giving their aye or noe, and the result shall be announced by the president.

On motion of Mr. Overton,

The articles of impeachment were then read by the clerk;

Whereupon,

William L. Brown Esq. addressed the court in behalf of the defendant and moved the court to quash the 2d specification of the 2d article or amend it so as to specify and describe the suit on trial, mentioned and referred to therein.

2d. That the 1st specification of the same article be quashed, or amended, so as more particularly to describe the suit therein referred to.

3d. That articles 4, 5 and 6 be quashed, or so amended as to separate the charges contained in each, (to wit,) as to the deed therein mentioned, and the failure to have the minutes of the court read relating thereto. Mr. Brown and Mr. Peyton affered arguments in support of said motion, which were replied to by the managers on the part of the House of Representatives. The question was then submitted to the court for their decision; and on the suggestion of the president thereof, it was ordered that the decision of the court, upon said question, be suspended until tomorrow morning 10 o'clock, to which time the court adjourned.

NEWTON CANNON, President.

WILL: K. HILL, Clerk.

SENATE CHAMBER, NOVEMBER 4, 1829.

Court of impeachment met according to adjournment; the president and members of the court in their seats; the managers on the part of the House of Representatives, and the defendant and his counsel being present, and seated within the bar of the Senate;

The court proceeded to the consideration of the

motion submitted yesterday, by defendants counsel, and decided that the court have not the power to amend, and ought not to advise it—

AYES—19.
NOES—none.

The proposition to quash the 2d specification of the 2d article, was next submitted by the president, to the consideration of the court; and on the question,

Will the Senate quash said specification?

It was determined in the affirmative.

AYES—10.
NOES— 9.

The affirmative votes were,

Mr. Allen, Burford, Cleveland, Frey, Gillespie, Graves, Huntsman, Littlefield, Love and Smith—10.

The negatives votes were,

Mr. Speaker Walker, Cannon, Greene, Johnson, Holman, Lytle, McClellan, Tipton and Webster—9.

And so said specification was quashed.

The court next proceeded to the decision of the 2d proposition contained in defendant's motion, (to wit,) that the 1st specification of the same article be quashed;

And on the question, will the court quash said specification?

It was decided in the affirmative.

AYES—10.
NOES— 9.

The affirmative votes were,

Mr. Allen, Burford, Cleveland, Frey, Gillespie, Graves, Huntsman, Littlefield, Love and Smith—10.

The negative votes were,

Mr. Speaker, President, Greene, Johnson, Holman, Lytle, McClellan, Tipton and Webster—9.

And so said specification was also quashed.

The court then considered of the 3d proposition contained in defendant's motion,

To quash articles 4th 5th and 6th.

And on the question,

Will the court quash said articles?

It was determined in the negative.

AYES——

NOES—19

So said articles were not quashed.

The defendant by his counsel, moved that the Clerk of the House of Representatives be required to furnish the defendant with a copy of the testimony given before the House or its committee; with reference to the several facts and charges set out in the articles of impeachment; or permit the defendant to take a copy thereof.

The court decided unanimously against said motion.

It was then moved by defendant's counsel, that he be allowed two weeks from this day, to plead or answer to the articles of impeachment preferred against him by the House of Representatives.

And the question thereon being taken, it was unanimously decided in favor of said motion.

Whereupon it was ordered by the court, that the defendant be allowed till Wednesday the 18th inst. ten o'clock, A. M. to plead to, or answer the said articles of impeachment.

The managers on the part of the House of Representatives and the counsel for the defendant agreeing thereto.

It was ordered by the court, that the trial of this cause be set for Monday ten o'clock, A. M. the 30th inst.

And that the clerk of this court be, and he is hereby authorized to issue subpœnas on the written order of any one of the managers on the part of the House of Representatives; and in like

manner issue to the defendant, all such subpœnas as may be demanded in writing by him or his counsel, for witnesses in this state, directed to the serjeant-at-arms, and returnable to this court on the 5th Monday in this month.

On motion of Mr. Littlefield,

Ordered, that this court adjourn, and stand adjourned until Wednesday ten o'clock, A. M. the 18th inst.

NEWTON CANNON, President,
WILL. K. HILL, Cl'k.

WEDNESDAY, NOVEMBER 18, 1829.

The court of impeachment met at the hour of ten o'clock, A. M. according to adjournment.

The managers on the part of the House of Representatives, and also the defendant and his counsel being present,

Mr. Balch, one of the counsel of the accused, then proceeded to read the answer and pleas of the respondent to the articles of impeachment preferred against him by the House of Representatives;

Which are as follows:

In the Senate of the State of Tennessee sitting as a Court of Impeachment.

THE STATE OF TENNESSEE,

vs.

NATHANIEL W. WILLIAMS.

The answer and pleas of Nathaniel W. Williams, Judge of the third Judicial Circuit, and one of the Circuit Judges, to the Articles of Impeachment exhibited against him by the Honorable the House of Representatives of the State of Tennessee, for high crimes and misdemeanors, alleged to have been committed by him.

This respondent in his proper person, comes into court, and protesting that there is nothing particularly and specifically alleged, as a high crime or misdemeanor, in said articles of Impeachment, to which he is, or can be by law, bound to answer, and saving to himself now, and at all times hereafter, all benefit of exception to the insufficiency of said articles, and each of them, and to the defects therein appearing in point of law, and otherwise: and protesting also, that he ought not to be injured in any manner, by any words, or by any want of form in this answer;—submits the following facts and observations, by way of answer to the said articles.

The first article relates to his supposed negligence and misconduct in not holding the courts of his Circuit, and alleges, that—

"He has capriciously, wilfully, and unlawfully, and in violation of his said oath of office, requiring him faithfully to perform and discharge all the duties incumbent on him as a Circuit Judge, to the best of his skill and ability, failed and refused to hold circuit courts, which it was his duty to hold, to the disappointment and great damage

to parties to suits pending in said courts, and in a way tending to bring the administration of the laws of the land into disrepute."

SPECIFICATION FIRST.

"On the second Monday of March, one thousand eight hundred and twenty-four, a circuit court was, by law, to be holden for the county of Overton, at the court house in said county, and there were then pending, and to be tried and determined in said court, two prosecutions in the name of the State of Tennessee against John Moore for feloniously passing counterfeit bank notes; one prosecution of the State against James Payne, for highway robbery, and many civil suits, both in law and equity; and it was legally the duty of said Judge to hold said court, as Judge thereof, until the business thereof should be finished, or until it become necessary to adjourn, for the purpose of holding some other circuit court; yet the said Judge did not hold said court, but negligently, capriciously, wilfully and unlawfully, failed and refused to hold said court, to the disappointment and great damage of parties then and there attending.',

This respondent, for answer to the specification contained in the first article, says: that he admits it to be true, that he did not hold the circuit court of Overton county in the month of March, 1824. This respondent has a perfect and distinct recollection of the providential causes which prevented him from attending and holding said court; but after so great a lapse of time, being a period of *almost six years*, it cannot be expected that he can produce witnesses to establish every fact and circumstance that might be deemed essential or desirable to be known, as connected with a full explanation of the causes producing a failure to

hold said court. The circumstances being then considered as entirely accidental, and no dissatisfaction expressed, or known to exist at the time, on the part of the community;—it is to be presumed, that few persons can be found who have any distinct recollection of the occurrence. This respondent had been engaged about two months, in holding the courts of his circuit, which preceded the circuit court of Overton. After the adjournment of the court at Sparta, in the county of White, he started, on Saturday morning for Monroe, the court house of Overton, expecting and *intending* to reach there on Sunday evening, preceding the second Monday in March, 1824.—He arrived on Saturday evening at White Plains, within twenty-five miles of Overton court house; it had been raining for several days, and the small creeks were nearly impassible. The rain continued to fall in torrents during the night, and next morning. Several gentlemen were in company, and principally members of the bar, who were going to Overton to attend that court. The members of the bar, or some of them, endeavoured to dissuade respondent, from attempting to hold said court, and the general opinion was that it would be wholly impracticable to cross the water courses between White Plains and Overton court house, at that time, and that they would not be passible sooner than the middle of the week. Whereupon respondent concluded, that inasmuch as he could not cross the waters in safety on the road to Overton court house, and there being no streams except the Cumberland (which could be crossed in a boat) on the road to Carthage; he would visit his family, after an absence of two months from home. To do this he had ample time, and yet arrive at Overton court house on Wednesday, so as to save the term of the court; expecting also, that in the meantime, the small

streams would have fallen so as to enable him to pass with safety. The members of the bar, who were with respondent at White Plains, were informed of this, his determination, and although it continued to rain, he went home, where he arrived on Monday; still intending to go to Overton court, if in his power so to do. In this, however, he was disappointed. The rains had been general. The Cumberland river was unusually full, and he had become much indisposed from so much exposure in the wet, and chilly weather on the preceding days. The waters were impassible, and in this way he was prevented from attending to hold the circuit court of Overton, at the March term, 182⅛, not as he is charged "negligently," &c. but by the act of God.

Respondent would here beg leave to remark, that he was elected one of the Judges of the circuit Courts of Tennessee in the year 1809, and performed the duties of that appointment until the summer or fall of 1818, when he voluntarily resigned the office. At the next session of the Legislature, this respondent was again chosen for the same high, important, and honorable station, which he has occupied ever since.

From the length of time he has presided in the courts of Tennessee—from the confidence his country had manifested towards him, by his re-election—after an experience of eight years of his administration of the laws, in his present capacity, and feeling, moreover, conscious of deserving as much of the public confidence, at his present advanced stage of life, as at any former period, he could not but feel surprised at an attempt to remove him from office by Impeachment, for a single failure to hold a court, and that too, so long since past, as to have escaped the memory of those most familiar with the causes which produced it. He avers that he has laboured sedu-

lously in discharge of his official duties; and that he has probably held more *special* terms, in addition to regular terms of the courts appointed by law, than any Judge in the state. He has been frequently absent, in the discharge of his official duty during a period of three months at a time, from his home and his family. His circuit is large, comprising in it the counties of Franklin, Warren, White, Overton, Fentress, Jackson and Smith. The circuit commences at Franklin county, on the second Monday in January; at Warren, fourth Monday of January; White, third Monday of February; Overton, second Monday of March; Fentress, third Monday of March; Jackson, fourth Monday of March; and Smith, second Monday of April. With so large a circuit, extending diagonally across the state, on a bench of the Cumberland Mountain, from which issue numerous streams, too small to justify the keeping of boats, and too violent and rapid, in their descent from the mountain, in cases of heavy rains, for ordinary bridges; is it not then, somewhat remarkable, that under all those circumstances, he has for so great a length of time held every court, with *one* single exception? If the omission to hold said court proceeded from culpable neglect, from mere caprice, from wilful or unlawful disregard of his duty, so as to justify his removal from office, why is it brought forward now, for the *first* time, after a lapse of nearly *six years*, and four sessions of the Legislature? Have those patriots, who now seek to eject him from office, been all this time sleeping on their posts? This cannot be supposed, for "*Patriots never sleep*," and if they do occasionally slumber, certainly not for so long a period. On the contrary, the feeling, whether patriotic or otherwise, which seeks his removal from office, the destruction of his character, and the ruin of his

family, is a new-born zeal sprung into existence long since the failure to hold the court in Overton in 1824.

And the said Nathaniel W. Williams, for plea to the said first article of Impeachment, saith, he is *not guilty* of any high crime or misdemeanor, as in and by said article is alleged; and this he prays may be inquired of by this Honorable Court, in such manner as law and justice may seem to require.

The second article of Impeachment charges, that—

"While presiding as Judge, during the transaction of business before him, in open court, he has been so careless, capricious, and inattentive to his duties, that he has unlawfully, and contrary to his duties, and in violation of his said oath of office, which requires of him a faithful performance and discharge of all the duties incumbent upon him, as a circuit judge, to the best of his skill and abilities, fallen to sleep, and remained so for a long time, to the damage of parties litigant, and to the great scandal of public justice."

SPECIFICATION FIRST.

"A circuit court was holden by, and before the said Judge, in and for the county of White, at the court house of said county, on the 4th Monday of August, one thousand eight hundred and twenty-eight, when and where, he, the said Judge, presiding in open court, on the trial of a suit wherein the lessee of Thomas T. Thompson's heirs, against Thomas Settle and —— Holliday, then and there had before him, did carelessly, negligently and unlawfully go to sleep continue asleep two hours, and waking, have the argument gone over again."

SPECIFICATION SECOND.

"A circuit court was holden by and before said Judge, in and for the county of Smith, on the second Monday of October, 1828, when and where, said Judge presiding in open court, on the trial of William Foutch, on an indictment of the state against him, for murder, which cause was then and there tried before him, unmindful of the high importance of the case, of the responsible duties that were incumbent on him, and of his solemn obligation to perform them faithfully, impartially, and to the best of his skill and ability, did carelessly, negligently and unlawfully go to sleep, and continue asleep for two hours."

This respondent has too much respect for this Honorable court, as well as to the House of Representatives, and for himself too, to insist that said second article, and the specifications, are ither frivilous or ridiculous, and will therefore make a respectful response and defence thereto.

This respondent, as it respects the second specification, under the second article, and for answer thereto, admits that he held a circuit court for the county of Smith, commencing on the second Monday in October, 1828, and he also admits that there was a presentation for murder tried before him at that time, but not such as is described in said article. But this respondent avers that it is untrue that he did negligently, carelessly and unlawfully go to sleep.

This respondent would remark, that he had contracted a habit of closing his eyes, when engaged in mental investigations, perhaps at first, under the impression that it had a tendency to aid reflection, by the exclusion of external objects.—And he presumes that the idea of his sleeping on the bench, has grown out of this circumstance;

and that many persons may have been innocently drawn into error, on this subject, from seeing him in this attitude, without a knowledge of his real habits; for he is unwilling to believe that there are any persons so base, as to seek the ruin of this respondent from *malicious*, or even more *degraded motives*, by the commission of perjury. He will not, however, deny, that it seems to him passing strange, that witnesses should be found to testify, that on so many occasions, he had slept for and during the precise period of *two hours*.

And the said Nathaniel W. Williams, for plea to the said second article of impeachment, saith; that he is not guilty of any high crime or misdemeanor, as in, and by, said second article of impeachment, is alleged; and this, he prays may be inquired of by this Honorable court, in such manner as law and justice may seem to require.

The third article relates to the supposed partiality of this respondent in the discharge of his official duties, and charges, that—

"The said Judge, unmindful of his obligation to administer justice without respect to persons, and faithfully and impartially to discharge the duties incumbent on him as such, has, in his official capacity, administered the law partially, and unlawfully indulged undue prejudice against parties to causes tried by him, and attornies who practice as such in the courts of his circuit, against their clients and clients' causes; and unlawfully, partially used and exercised great favor towards other parties to causes tried by him, and attornies of said courts, their clients, and their clients' causes: and has unlawfully adjudged and ordered. in causes in the courts of his circuit, unfaithfully, partially, and with respect to persons."

SPECIFICATION FIRST.

At a circuit court begun and held for the county of Smith, at the court house thereof, on the second Monday of April, one thousand eight hundred and twenty-five, by and before the said Nathaniel W. Williams, Judge as aforesaid, the cause of John Den, lessee of James Henderson, against Sampson Williams and —— Cox, pending in said court, was, during that term, tried by a jury, before said Judge, when, from the evidence in the cause, a question of law became material to be decided in the trial, and was decided by said Judge, in his charge to the jury; namely, whether possession of the land in controversy, taken and continued by the defendants for the period of seven years, next before the commencement of the suit, under a legal title, would protect them against the action of the plaintiff; or whether the action of the plaintiff was, in that case barred, inasmuch as the lessor of the plaintiff claimed title to the land in dispute under a grant covering the same, which had been issued much less than seven years before the commencement of the suit, but which was founded on an entry for the same land, made much more than seven years before the suit was brought, when and where, the said Judge, erroneously, improperly, and from prejudice, and ill will towards the said Sampson Williams, one of the defendants in said suit, did, amongst other thing in regard to said question of law, decide, and to the jury then trying said cause, declare his opinion to be, that a man should not be barred, unless he had a legal right to oppose to his adversary, and that an entry is not to be barred by the statute of limitations, thereby determining the said question of law against the defendants, knowing that the same ought to have been decided in their favor. And at a circui

[illegible] in the county of Franklin, [illegible] in said county, on the second Monday in May one thousand eight hundred and twenty-five by and before the said Judge, the cause of John Doe lessee of Frederick A. Ross, against Leroy May, pending in said court, was, during that term, tried by a jury before said Judge, when, from the evidence in said last mentioned cause, the same question of law, which is above stated, become material to be decided on the trial thereof, which had arose, and had been decided in manner aforesaid, in the cause first above mentioned. The evidence in the last mentioned cause, presented to the said Judge, the same question for his decision which he had, in the first mentioned cause decided, when neither the law nor the adjudication thereof had, in the mean time, been in any manner changed or differenaly understood; when and where, the said Judge, not being influenced by prejudice, partiality, or ill will, to either of the parties, amongst other things in regard to said question of law, did, in his charge to the jury trying said last mentioned cause, decide and declare, that the statute of limitations would operate in favor of a possession, as well against a claimant who held by entry only, as against him who held by grant; thereby determining the said question of law, in the last mentioned cause, in favor of the defendants.

SPECIFICATION SECOND.

A Circuit Court, in and for the county of Franklin, was begun and holden by and before said Judge, on the second Monday in January, one thousand eight hundred and twenty-nine, and two causes, the first, Charles Neighbors against Henry Hereford and others; and the next, Nancy Brewer, against Sherrod Williams, then and there

stood for trial on the docket of said court; both were called for trial in order, on the same day; and in each case, the attorney of the plaintiff requested of the court, that his client's cause be passed over for the present, assigning the same reason; but said judge who might have been expected to decide alike, in like cases, being inimical to Hopkins L. Turney, who was, and then there appeared, attorney for plaintiff in the first of the aforesaid cases, an attorney for the defendant in the second case, and being influenced by an inordinate partiality for Micah Taul, who then and there appeared, attorney for the adverse party, in each case, did wilfully, unjustly, partially and unlawfully, refuse the request of plaintiff's attorney in the first named case, subject him to a non-suit, and grant the request of the plaintiff's attorney in the second named case, threatening if the opposite attorney did not consent, he would adjourn court, and by that means enforce it, and did accordingly adjourn court, and thereby did enforce it."

This respondent, in answer to the first specification under the third article above set forth, begs leave to state, that he admits he held a Circuit Court in and for the county of Smith, commencing on the second Monday of April 1825; and that such a suit as is described first above in said specification, was tried before him; whether the name and style of the case is correctly stated he cannot say, not having yet been enabled to procure a copy of the record. He also admits, that he held a circuit court for the county of Franklin, on the second Monday in July 1825, and that he is willing to admit that a suit, Ross' lessee against May, was tried before him.

This respondent will now endeavor to present to this honorable court, as far as practicable, either from his own recollection, or the recollection of others, at this distance of time, a brief

statement of facts, in relation to the decision of the said two causes.

Upon the trial of the first named cause, the counsel for the defendants requested the court to charge the jury, that the statute of limitations of seven years (if they were satisfied the defendants had peaceable possession of the land in dispute for that length of time,) would bar the plaintiff's action. The plaintiffs insisted that the statute would not run against an entry under any length of possession. And although it was questionable whether the evidence in the case made it necessary to give any charge upon that subject, respondent did charge upon the point, honestly, impartially and without respect to persons, in favor of the plaintiff. Upon the investigation of this question in said trial, something was said about the supreme court at Columbia having decided that the statute would run against an entry. It was said, in reply, that no decision had been made; but that the case was then under consideration and advisement, in the case of Hickman's lessee against Gaither and others, in Nashville. This respondent, under this state of things, and as the report, relative to the alleged decision at Columbia, came in a somewhat questionable shape, deemed it his duty to decide according to what he believed and understood to be the decisions of the courts of Tennessee and North Carolina, for the last twenty years, upon that subject.

Upon the trial of the cause, Ross' lessee against May, at the circuit court of Franklin, the same question was again raised by the counsel for the defendant; and it was again urged, that the supreme court at Columbia had decided the question, and the Hon. Jacob C. Isaacs, vouched for the truth of the information and report of the case. This respondent, then feeling himself authorized to attach credit to the report of the case of Holland, vs. Wright, as decided at Columbia,

and considering it his duty at all times to conform his decisions to the principles settled by the supreme revising tribunal of the country, and influenced by these considerations, and no other, did decide in said cause, that the statute of limitations would run against an entry. This respondent would further remark, that although disinclined to attach improper motives to any one on this occasion, yet he coniders it a just cause of complaint, that his accusers should have permitted their vengeance to sleep so long, that he will of necessity, be deprived of evidence, dependant on the frail memory of man, which might, at the proper time have been readily produced, to explain the matters above referred to.

This respondent considers partiality in a Judge, a most enormous sin, and he feels happy in the belief, that he lives in a community, who, with one united voice, will cry aloud against Judicial corruption, or *official persecution*. In such a community, ready at all times to aid the most indigent, ignorant and weak—to drag to punishment, the wretch who might dare to profane the sacred temple of justice, by official corruption—is it not strange that nearly five years should have elapsed, since the alleged crime has been committed, by the decision against the said *Sampson Williams*, and no complaint made against this respondent? When it is remembered, however, that the object of this alleged corrupt decision, (Sampson Williams,) is a man of wealth, a man well verssd in all the bye-ways of political life and legal warfare—one no less remarkable for the astute management of all matters pertaining to his own advantage, than for his unwearied assiduity in wreaking his vengeance upon the the objects of his displeasure. When it is known too, that this respondent has had the misfortune to incur the malignant hostility of this individual, it

will, perhaps appear most reasonable, that the idea of partiality and corruption in the case alluded to, was an after thought—less the result of pure conviction, than the ingenious machinations of secret and deadly hatred. If such be not the fact, why was this respondent not called upon to answer those charges, during the sessions of 1825–6 or 7? While injuries are recent, they are usually most severely felt, and the desire of vengeance in the party injured, is most predominant. Respondent would beg leave further to remark, that the said *Sampson Williams*, as he has understood and believes, has for several years entertained towards him, feelings of great hostility, for what cause, he cannot with certainty say; but he believes it not to have originated from the decision above referred to, inasmuch as his enmity existed long before that date. The said Sampson Williams has had many suits pending where this respondent presided. He has tried several of said causes. He does not pretend to recollect the various grounds and principles upon which said several causes were decided; but he avers and affirms, that all and each of them were decided, honestly, impartially, and without respect to persons.

This respondent would further remark, that the suit alluded to in said article, was only one of two or more actions of ejectment, about the same land, brought at the same time; one of which had been tried many years before, and decided against said Williams, who took a writ of error to the Supreme court, in which the rights of the parties had been investigated, in relation to the whole tract of land involved in this suit, as well as the case then before the court, and decided by the supreme court against said Sampson. He, the said Sampson, then filed a bill in Equity, involving the rights of the parties to the said land, which

had also been decided against him, both in the court of chancery and the court of appeals. This branch of the controversy, however, remained on the docket of the circuit court many years, while those other causes were under investigation, and was thus brought to trial at April term 1825.—It therefore seems reasonable, that if this respondent had intended to use his official station to the injury of said Sampson Williams, he would have selected a case, in which the Supreme court had not already decided the right against him, sitting both as a court of law and equity.

This respondent, for answer to the *second specification under the third article*, says: he admits that he did hold the circuit court of Franklin county at the January term 1829, and that Micah Taul and Hopkins L. Turney are practising lawyers in said court, and were attending the same during the said term. The *high crime* which he supposes is designed to be imputed to him on this specification, is, that he was partial to Taul, and unfriendly to Turney; but in what respect the conduct of this respondent, or his opinions, or decisions in the cases named were prejudicial to the said Turney, or his client, the specification does not set forth. In truth, the language of this specification is so indefinite, that it is difficult to comprehend its true intent. In relation to the case of Neighbors vs. Hereford, in which Mr. Turney is said to have been attorney for the plaintiff, it is charged, that he requested of the court, "that his client's case be passed over for the present."—That his motion was not sustained, and that this respondent, being influenced, by an undue partiality for Macah Taul, (who then and there appeared as attorney for the adverse party,) "did wilfully, unjustly, partially, and unlawfully, refuse the request of plaintiff's attorney, and subject him to a *non suit*." That a similar motion was made

by *Taul* as attorney for the plaintiff, in the other case "assigning the same reason," and that his request was granted. If the "reason," which has been said to have been assigned, had been set forth in this specification, this Honorable court might be enabled to judge whether this respondent, did, partially, unjustly and unlawfully refuse the request of Plaintiff's attorney in the first named case. Two requests of the same kind might be made at the same time, or on the same day, and the one very properly granted, and the other refused. Cases might "be alike" in some respects, but very different in others. Nothing is more common in courts, than a motion for a continuance, and although, precisely the same ground might be laid in two several cases, in immediate succession, the court might be bound by law, and the ordinary rules of proceeding, to continue the one and refuse the other. Stronger ground is required to be made out, on an application for a *second* continuance, than on the *first*, and so in proportion, somewhat, to the delay which the party applicant may have already created in the progress of the cause.

The same rule will apply to all motions addressed to the sound discretion of the court. How far this respondent has been governed by such rules and principles in the causes referred to, in the foregoing article, he will endeavor now to explain. Respondent has caused search to be made in the Franklin circuit court, in relation to the cases recited, and described in this specification, from which it appears, that there was *no such case*, as Charles Neighbors vs. Henry Hereford and others, on the docket of the Franklin circuit court, at the January term 1829, or at any other term of the court. He admits there was such a case as *Nancy Brewer* vs. *Sherrod Williams*, on the docket of that term, which was *continued* on

affidavit. The charge, most probably, was designed to apply to some other case, and some other term of the court. At the special term in December 1828, there was a case of *Abraham Neighbors* vs. *John Patton, Henry Hereford and Charles Neighbors* on the docket, in which the plaintiff was non-suited. But here another difficulty would arise, the case of *Brewer* vs. *Williams*, was not the next case on the docket to that of *Neighbors* vs. *Patton and others*; there were twenty-six causes between them; so that respondent would have been compelled to take a leap, (not in the dark, as has been done against him,) but, over these twenty-six cases, in order to reach that of *Brewer* vs. *Williams*. As this case, however, approaches nearest to the names of parties, to the one attempted to be described, he will consider it as the one which was designed to be referred to in the specification now under consideration. If this is the case, respondent cannot ascribe the misnomer or error, in description of the parties, and of the term of the court, to a mere slip of the pen, or a clerical blunder; but to the fact, that transcripts of the records, in the cases mentioned, were not before the committee, or the member, or person who prepared the articles, he is well assured; for if either could have had before them these transcripts and could have understood the character of the case, and preceding steps therein, this specification would have shared the fate of some of its kindred vagaries, and been buried with them amid the rubbish of the investigating committee. Respondent avers, that in the disposition made of the case of *Abraham Neighbors* vs. *Hereford, Patton and Neighbors*, at the special term of December 1828, and also of the case of *Nancy Brewer* vs. *Sherrod Williams* at the same term, as also at the January term of 1829, he was strictly correct and acted

conformably to law and justice, and to the uniform practice of the court; and that in every proceeding in relation to said causes, he has been uninfluenced by partiality or prejudice against either of said parties or their counsel. To enable this Honorable court the better to understand the cases, he will file transcripts of the records therein, which he hereby refers to, and makes a part of this his answer. The case of *Ab'm. Neighbors* vs. *John Patton, Ch's. Neighbors and Henry Hereford* was commenced in the county court of Franklin in October 1825, and returned to the November term succeeding. At the February term 1826 issue was joined, on the plea of not guilty. At the May term 1826 the issue came on to be tried before a jury, who returned a verdict for the defendants, on which, judgment was entered by the court. From this judgment, plaintiff prayed and obtained an appeal to the circuit court. The cause being thus in the circuit court, was regularly called at the July term 1826, and *continued* on the *affidavit of the plaintiff.*

It was continued from term to term, until July term, 1828, when it was agan continued *for the plaintiff* and at his cost; or in reality, the plaintiff was *then* non-suited, and the non-suit entered on the docket; but not on the minutes;—and an agent of the plaintiff, filed an affidavit, which procured the non-suit to be set aside, and the entry on the minutes made of continuance at the plaintiffs cost, without reference to the non-suit.

At the special term of December, 1828, this cause was again called, and the plaintiff *non-suited.* Is it not obvious to this Honorable court, that after so great delay, it should have required very strong grounds to authorise the granting a continuance, or any kind of indulgence. And although attempts may be made, by the

introduction of evidence, not of record, to prove that such strong grounds were laid, he avers, that such was not the fact. On the contrary, the plaintiff's neglect was manifest, and he had in fact *abandoned his* cause, and *left the country*. When the cause was called, Mr. Turney representing another gentleman who had brought the suit, may have requested that the case should be passed on the docket; this request, even if made, was not assented to by the opposing counsel, John Goodwin and Micah Taul. One of the defendants was in court in proper person, claiming a trial.—The attorney for the plaintiff failed to show any sufficient ground for a continuance or postponement. On the contrary, he distinctly admitted, that he did not know the plaintiff, or any of his witnesses. and did not know what they would prove if present.—Under this state of the case, the plaintiff was called, and failing to appear and prosecute his suit, a *non-suit* was entered. Had the court done otherwise after such inexcusable delay, it would have been a departure from the best established rules of practice in our courts of justice. The failure, to observe which, would be productive of endless delay and serious grievance.

The other case of *Nancy Brewer* vs. *Sherrod Williams*, was commenced in the circuit court, returnable to January term, 1828, at which term issue was joined, on the plea of not guilty. The cause was not reached on the docket at July term 1828. But at that court, on motion of the plaintiff, a *subpoena duces tecum* was awarded for Alexander S. Acklin, Esq. requiring him to bring into court, the original papers filed in his office, in the case of the *State* vs. *Nancy Brewer*, "the plaintiff," at the special term in December, 1828. When the case was called, the Justice of the Peace above referred to, did not attend, and the

papers had not been filed according to the command of the subpoena. The plaintiff was a female—the action was for malicious prosecution—the Justice lived less than a mile from the court house, but was known to be afflicted with the rheumatism, and often unable to travel. Thus situated, the cause was either passed on the docket, or contined. At January term, 1829, it was continued on *affidavit*.

This respondent has thus attempted to give to this Honorable court, a correct history of those cases, and proceedings therein at the special term, in December, 1828. and at January term, 1829. Such of the facts, as are not of record, he will establish by other evidence.

From all which this Honorable court may be enabled to determine, whether in the disposition made of those causes, he has fairly subjected himself to the cause of official misdemeanor.—The crime of partiality, with which he has been most wantonly assailed, in this specification, is one, odious in its character, and therefore should not be lightly made. The very nature and character of the office held by respondent, requires that justice should be administered, without respect to persons. To which has been added, the solemn obligation of an oath, all which he avers he has, at all times, endeavoured most sacredly to observe.

And the said Nathaniel W. Williams, for plea of the said third article of impeachment, saith, that he is not guilty of any high crime or misdemeanor, as in, and by the said third article is alleged; and this he prays may be enquired of by this Honorable body, in such manner, as law and justice may require.

The articles of Impeachment designated by numbers fourth, fifth and sixth, relate to the supposed misconduct of the respondent in taking the

privy examination of Caroline P. Taul, to a deed for the conveyance of real estate, and are as follows:

ARTICLE FOURTH.

"On the twenty-third day of July, one thousand eight hundred and twenty-eight, in the county of Franklin, at a circuit court, begun and holden in and for said county, at the court house thereof, before the said Judge, then and there presiding, a paper writing, under seal, purported to be a deed of conveyance from Thomas P. Taul and Caroline P. Taul, who was the wife of said Thomas P. Taul, for a part of a lot or piece of land lying in the county of Davidson, and town of Nashville, which land was in right of the said wife, to Benjamin Deckerd, and purporting to be signed by said Thomas P. Taul, and sealed with his seal, and purporting to be signed by said Caroline P. Taul and sealed with her seal, was by the said Thomas P. Taul, then and there, in open court, before said Judge presiding, produced and acknowledged, but in a manner to be known by him and said Judge, and as few others as possible, whereupon, he the said Judge presiding as aforesaid, then and there, wilfully, falsely, corruptly and unlawfully made upon the back of said paper writing, purporting to be a deed, the following false certificate, to wit:

STATE OF TENNESSE,
FRANKLIN COUNTY.
Franklin Circuit Court,
July Term, 1828.

July 23rd, 1828.—The foregoing deed of conveyance from Thomas P. Taul, and Caroline P. Taul, his wife, was this day signed, sealed, delivered and duly acknowledged in open court; by the said Thomas P. Taul and Caroline P. Taul,

to be their act and deed for the purposes therein named; the said Caroline having been first privily examined by me, separate and apart from her husband, and first satisfied that she executed the same of her own free will and accord, without the threats or persuasion of her husband, wherefore the same is admitted of record, and ordered to be certified for registration accordingly. In testimony whereof, I have hereunto affixed my hand and seal in open court, this 23rd July, 1828.

NATHANIEL W. WILLIAMS, (SEAL.)

"And then and there, as Judge presiding, wilfully, corruptly, falsely and unlawfully, did cause to be entered as a minute or record of said court, in the record book of said court, an entry in the following words, to wit:

A deed of conveyance from Thomas P. Taul and Caroline P. Taul his wife, to Benjamin Deckerd for a lot of ground, number eighty-nine—situate in the town of Nashville, was this day in open court, signed, sealed, delivered, and duly acknowledged by the said Thomas P. Taul and Caroline P. Taul, to be their act and deed for the purposes therein mentioned—she, the said Caroline P. Taul, having first been privily examined by the court, separate and apart from her said husband, then declaring that she executed the deed aforesaid, of he own free will and accord, without the threats or persuasions of her husband, and the court being satisfied thereof whereupon, the same is admitted of record and ordered to be certified for registration: which said certificate, upon the back of said deed, and which minute or record of said court as above recited, are both false in this, that the said deed was not on the said alleged day, nor at any other time in open court, signed, sealed, delivered, or duly acknowledged by her the said Caroline P. Taul, for the purposes therein named: and in this, that the said Caroline P. Taul had not

been privily examined by the court, separate and apart from her husband, and that she did not declare to the court, upon a privy examination, or in any way, that she executed said deed of her own free will and accord without the threats or persuasions of her husband; and in this, that she was not present in court, or in any manner attended upon the court on that day, or at any other time of the term thereof, but was entirely absent therefrom; and then and there as Judge presiding as aforesaid, did wilfully, corruptly, and unlawfully prevent the said minute or entry upon the record from being read in open court, at any time after the same was placed upon the record, and did adjourn the court for that term without having the same read in open court, contrary to his duty, as prescribed by act of Assembly;—All which matters and things charged in this article, the said Judge presiding in said court, wilfully, corruptly, and unlawfully did, with intent to injure, wrong and defraud said Caroline P. Taul and her heirs at law, from undue partiality towards the said Thomas P. Taul, and a willingness to promote his interest, and from a neglect and an unlawful disregard of his duties and obligations, by means whereof, and by a deed of conveyance procured by said Thomas P. Taul to himself, and said Caroline P. Taul, from said Benjamin Deckerd, without any consideration, on the 24th day of July, one thousand eight hundred and twenty-eight, for the same lot or piece of ground of the value of ten thousand dollars, and the certificates endorsed on said deeds, and the registration of which deed, the said Caroline P. Taul and her heirs at law, were falsely, fraudulently, and corruptly, according to the forms of law divested of the legal title to said lot and piece of ground, and the same has, in legal form, become vested in the said Thomas P. Taul and his heirs at law.

ARTICLE FIFTH.

"A circuit court for the county of Franklin was holden in said county, at the court house thereof, on the second Monday of July, one thousand eight hundred and twenty-eight, by the said Nathaniel W. Williams as Judge as aforesaid, and during said court, to wit: on the twenty-third day of said July, Thomas P. Taul produced in said open court a deed of conveyance from himself and Caroline P. Taul his wife, for a part of a lot or piece of land lying in Davidson county, in the town of Nashville, to Benjamin Deckerd, and acknowledged the same to be his act and deed for the purposes therein named; whereupon, unmindful of his duties as a circuit Judge, and controlled by a partiality towards the said Thomas P. Taul, he, the said Judge presiding, falsely, willingly, wilfully, knowingly and unlawfully caused to be entered of record, by the clerk of said court, in the record book or minutes of said court, in relation to said deed, the following false entry and record, to wit: "A deed of conveyance from Thomas P. Taul and Caroline P. Taul, his wife, to Benjamin Deckerd, for a lot of ground number eighty-nine, situate in the town of Nashville, was this day in open court, signed, sealed, delivered and duly acknowledged by the said Thomas P. Taul and Caroline P. Taul, to be their act and deed, for the purposes therein mentioned; she, the said Caroline P. Taul having first been privily examined by the court, separate and apart from her said husband, she then declaring that she executed the deed aforesaid of her own free will and accord, without the threats or persuasion of her husband, and the court being satisfied thereof, whereupon the same is admitted of record and ordered to be certified for registration."

"And which said entry is false in this, that the

said deed was not on that, or any other day, in open court, signed, sealed, delivered or duly acknowledged by the said Caroline P. Taul, to be her act and deed, for the purposes therein named; and in this, that the said Caroline P. Taul had not been privily examined by said court, separate and apart from her said husband; and in this, that she did not declare that she executed the aforesaid deed without the threats or persuasions of her husband—and afterwards, to wit: on the morning of the 24th day of July, he, the said Judge, unmindful of the true nature of his obligation, and with partiality and favor to said Thomas P. Taul, did, then and there unlawfully, fail and refuse to have read in open court, the minute or entry of said record, and so failing and refusing, adjourned said court for that term.

ARTICLE SIXTH.

"On the second Monday of July, eighteen hundred and twenty-eight, in the county of Franklin, at a circuit court began and held, in and for said county, at the court house thereof, before said Judge, then and there presiding, and continued to be holden until the 24th day of said July, a paper writing, under seal, purporting to be a deed of conveyance from Thomas P. Taul and Caroline P. Taul, (who was the wife of the said Thomas P. Taul,) for a part of a lot or piece of land lying in the county of Davidson, and town of Nashville, (which land was in right of said wife) to Benjamin Deckerd, purporting to be signed by Thomas P. Taul, sealed with his seal, and by Caroline P. Taul, sealed with her seal, was by said Thomas P. Taul, then and there in said open court before said judge presiding, produced and acknowledged by him, the said Thomas P. Taul, but in a manner to be known by him and the said

Judge. and as few others as possible; whereupon he the said Judge presiding as aforesaid, not being sufficiently cautious, and circumspect, did wilfully, knowingly, falsely and unlawfully, make the following false certificate upon the back of said deed, to wit:

"STATE OF TENNESSEE,
FRANKLIN COUNTY.

Franklin Circuit Court, July Term, 1828.

July 23rd, 1828.—The foregoing deed of conveyance from Thomas P. Taul, and Caroline P. Taul, his wife, was this day signed, sealed, delivered and duly acknowledged in open court, by the said Thomas P. Taul and Caroline P. Taul, to be their act and deed for the purposes therein named. The said Caroline having been first privily examined by me, separate and apart from her husband, and I first satisfied that she executed the same of her own free will and accord, without the threats or persuasions of her husband. Wherefore the same is admitted of record, and ordered to be certified for registration accordingly.

In testimony whereof, I have hereunto affixed my hand and seal in open court, this twenty-third July, one thousand eight hundred and twenty-eight.

NATH. W. WILLIAMS, (SEAL.)"

And not being sufficiently cautious and circumspect in administering law, affecting the rights of others, did wilfully, knowingly, falsely and unlawfully, cause to be made by the clerk of said court, upon the back of said deed, the following false certificate, to wit:

"STATE OF TENNESSEE,
FRANKLIN COUNTY.

Franklin Circuit Court,
July Term, 1828,

July 23rd, 1828—The foregoing deed of conveyance from Thomas P. Taul and Caroline P.

Taul his wife, to Benjamin Deckerd, was this day in open court, signed, sealed, delivered, and acknowledged by the said Thomas P. Taul and Caroline P. Taul, to be their act and deed for the purposes therein named; the said Caroline P. Taul having been first privily examined by the court, separate and apart from her said husband, she then declaring that she executed the deed aforesaid, of her own free will and accord, without the threats or persuasions of her husband, and the court being satisfied thereof: wherefore the same is admitted of record, and ordered to be certified for registration.

In testimony whereof, I have hereunto subscribed my name, and affixed my private seal, having no official seal of office, this 23rd July, 1828.

JONATHAN SPYKER, Clerk,
By P. S. DECKERD, D. C."

And not being sufficiently cautious and circumspect in administering law, affecting the rights of others, did wilfully, knowingly, falsely and unlawfully, cause to be made by the clerk of said court, upon the minute or record book of said court, the following false minute or record, to wit:

"STATE OF TENNESSEE,
Franklin County.

Circuit Court,
July Term, 1828,

Wednesday, 23rd July, 1828.—A deed of conveyance from Thomas P. Taul and Caroline P. Taul his wife, to Benjamin Deckerd, for a lot of ground number eighty-nine, situate in the town of Nashville, was this day in open court, signed, sealed, delivered and duly acknowledged, by the said Thomas P. Taul and Caroline P. Taul, to be their act and deed for the purposes therein mentioned; she, the said Caroline P. Taul, having been first

privily examined by the court, separate and apart from her said husband, she then declaring, that she executed the deed aforesaid, of her own free will and accord, without the threats or persuasion of her husband, and the court being satisfied thereof—whereupon, the same is admitted of record, and ordered to be certified for registration."

Which said several certificates, and said minute or record as above recited, are respectively false in this, that the said deed was not on that or any other day, or time in open court, signed, sealed, delivered, or duly acknowledged by the said Caroline P. Taul, to be her act and deed, for the purposes therein named; and in this, that the said Caroline P. Taul, had not been privily examined by the court, separate and apart from her husband, and that she did not declare to the court upon a privy examination, that she executed the said deed of her own free will and accord, without the threats or persuasions of her husband; and in this, that she was not in court, nor in any manner attending the same, either on that day, for months before, or ever after, till her death. And then and there, as Judge presiding, as aforesaid, did wilfully and unlawfully, prevent the said minute or entry upon the record, from being read in open court, at any time after the same was placed upon the record, and did adjourn the court for that term, without having the same read in open court, contrary to his duty as prescribed by act of Assmbly. All of which matters and things, charged in this article, the said Judge presiding in said court, wilfully, knowingly and unlawfully did, to the great injury of the said Caroline P. Taul and her heirs at law, from an undue partiality to the said Thomas P. Taul, and willingness to promote his interest, and from a neglect, and an unlawful disregard of his duties and obligation. By means whereof, and by a

deed of conveyance procured by said Thomas P. Taul to himself and said Caroline P. Taul, from said Benjamin Deckerd, without any consideration, on the 24th day of July, one thousand eight hundred and twenty-eight, for the same lot or parcel of ground of the value of ten thousand dollars, and the certificates endorsed on said deeds, and the registration of which deeds, the said Caroline P. Taul, and her heirs at law, were falsely and fraudulently, according to the forms of law, divested of the legal title to said lot or piece of ground; and the same has in legal form, become vested in the said Thomas P. Taul and his heirs at law."

This respondent understands the foregoing *three* articles of Impeachment, to relate to the *same* subject matter, and to form in fact, but *one* entire charge—and shall therefore proceed to answer the same jointly. Respondent admits that he commenced holding a circuit court for the county of Franklin, on the second Monday of July 1828, and that the same was continued and held until after the 23rd day of the same month. Thomas P. Taul (who is named in said articles) had sold to William Porter of Nashville, part of a lot in Nashville, and his brother-in-law James Campbell had become his security in a bond to Porter for a title to be made, after Caroline P. Taul, the wife of said Thomas P. should arrive at full age—the lot being her property before her marriage—Porter had sent a special message from Nashville to Winchester, to have said deed executed during the term of said court, by Taul and wife. This deed was left with James Campbell, by the agent of Porter, under a promise from him (Campbell,) that he would, at some convenient season, have it acknowledged by Mrs. Taul in legal form, and that he would take this respondent, or procure him to go to his house and

take the privy examination of Mrs. Taul to said deed. Accordingly, by the desire, and procurement of the said James Campbell and Thomas P. Taul, respondent left the Bench, court being then open, and proceeded to the house of the said James Campbell, distant from the court house about one hundred yards. When he arrived at Mr. Campbell's, he was seated some time in the front room in friendly conversation with Mrs. Campbell, until it was announced by Mr. Taul, that his wife was ready to receive respondent in another room.

Respondent was then conducted into the chamber of Mrs. Taul by Mrs. Campbell, and her husband Thomas P. Taul. The said deed from Taul and wife to Porter, was then presented, and also, the deed from them to Benjamin Beckerd. After Mr. Taul and Mrs. Campbell had retired, respondent took the private examination of the said Caroline P. Taul, touching her execution of said deeds, and the said Caroline P. Taul, upon such examination, did then and there, acknowledge the said deeds, and that the execution of them was of her own free will and accord without threats or persuasion by her husband. Respondent then returned into court immediately after said privy examination, and proceeded with the business of the court. Trusting the preparation of the orders and certificates necessary to give legal effect to the same, to the parties interested in said instruments, presuming that they would have it correctly done, and also, to the clerk who was an experienced and trustworthy officer, the orders and certificates were made alike in relation to both deeds, and so placed on the records of the court. This respondent has been informed and believes, that said James Campbell made out the form of certificate that was afterwards used upon said deeds. This fact, however, he does

not know of his own knowledge, nor does he know that he can prove the same now, since the death of Thomas P. Taul. Respondent has been in habits of friendship and intimacy for many years with Col. William P. Anderson; and also, for some considerable time with his son-in-law James Campbell, and entertained no other than friendly feelings towards them, and their families, at the time said acknowledment was taken, and therefore, could have had no assignable motive to seduce him from the path of his duty to their prejudice; and this respondent would here state, that he has always believed that by the laws of the land, he was authorised to take the acknowledgment of a deed, and privy examination of a feme covert, in the manner and form pursued in this instance, and under that conviction, he had uniformly done so previously to the said 23rd July, 1828. This he understood to be the practice of the country, and the uniform opinion of the profession, so far as he was informed on that subject.

And respondent now insists, that the manner and form adopted on this occasion, was strictly legal, and humbly conceives, that it can be so manifested to the satisfaction of this Honorable court. But even if respondent should, in the opinion of your Honorable court, be mistaken in his construction of the law on this subject, is there any circumstance connected with it, from which even gross negligence, much less fraud or partiality, can be justly imputed to this respondent? Two gentlemen of respectable standing at the Bar, sons-in-law of an old acquaintance and friend, are interested in having deeds executed and properly certified for registration; they applied to respondent to go to the house of one of them to take such examination, alleging that the lady's health was too delicate to wait on the Judge at the court

house. Was it proper that respondent should refuse, when he had frequently done the same for others under similar circumstances? Surely not. Nor should he be considered as reposing too much confidence in those gentlemen to intrust them with the preparation of these certificates, and entries, in their judgment necessary to be made in order to give effect to said deeds.

This respondent has no recollection of the fact charged in said article, that the orders in relation to said deed were passed over without being publicly read in court; and supposing it true, he denies that he was guilty of any remissness or impropriety in so doing. To have the orders correctly made, was all that was necessary. A skilful and faithful officer had drawn them up, under the direction of respectable attornies, who were interested in having every thing in relation to them, done in a manner conformable to law. He has no doubt, therefore, if applied to, to pass on said orders without reading them again in court, he did so; not for the purpose of concealment or fraud, but because it was entirely unnecessary to re-examine them under such circumstances. It is usual for courts to pass over the reading of decrees upon the minutes, with which the parties are satisfied; and the court of Appeals frequently omit to have their minutes read in open court, but examine them at their chambers, to see that the entries are correctly made. This is their practice, as respondent is informed and believes; and is referred to only for the purpose of proving to your honorable body, that the law on this subject is considered only directory; and that the object of the Act of Assembly is, to require the courts to be satisfied, that their entries are correctly made.

In this instance, the entries were strictly legal,

and the object of the law attained. Is it not, then, *illiberal* and *absurd*, to impute corruption to a Judge, merely because the strict letter of the law was not complied with? Respondent avers, that if there was fraud in procuring said deed, or concealment in the transaction desired by said Thomas P. Taul, he was wholly ignorant of it: on the contrary, every thing was done openly, and in the usual way. He went openly to Mr. Campbell's house, waited in the parlor until Mrs. Taul was ready to receive him. Mrs. Campbell, at the same time, manifested by her conduct and conversation, that she knew the object of his visit. The examination was taken, he returned to court, and the orders for both deeds to be admitted to record, were made at the same time, and in the same manner. All which, he had reason to believe, were seen and understood by Mr. James Campbell, who was attending in court at the time. Respondent however, does not consider himself in any manner concerned in the question of whether fraud was intended, or otherwise, by any other person than himself, in the transaction. And he solemnly avers, before this Honorable court, that he is entirely innocent of any intentional wrong, with regard to said transactions: nor had he any suspicion, or reason to believe, that fraud was designed, by any one of said parties; nor does respondent believe, that those who consider themselves interested in rendering void said deed, from Taul and wife to Deckerd, can suspect him of any intentional wrong in said transaction.

This respondent would further remark, that since it has been attempted to invalidate the deed, from Taul and wife to Benjamin Deckerd, on the ground of fraud in procuring it from her by her husband, and to connect this respondent with that transaction, he has caused some examination to be

made on that subject, from which he is further induced to believe as he had heretofore, that the transaction, was, in every respect, fair, and the disposition of said property, such as was desired by the wife of said Thomas P. Taul, for a considerable period previous to said transaction. The said Caroline P. Taul was an intelligent woman, and an affectionate wife—her husband was in bad health, and thereby disabled from the successful pursuit of his profession. Under such circumstances, it was but natural and reasonable, that she should design her property for the use of her husband, during his life. At this period, or soon thereafter, said Thomas P. Taul executed a Will, and placed it in the hands of the said trustee, devising the same property, after the death of himself and wife, without issue, to Mrs. Campbell and Rufus K. Anderson, the only brother and sister, of the whole blood of his wife, which Will remained unrevoked, until he received his mortal wound from the hands of one, who had thus been designated, as the object of his bounty.

Respondent is further confirmed in his opinion of the entire fairness of this transaction, from the statement made by James Campbell, in writing, after investigating the same, subsequent to the execution of said deed. This statement is in the words following, under date of the 20th November, 1828—"from Mrs. Taul's repeated declarations since the execution of the deed. I am satisfied she knew the contents of the instrument she was signing, at the time she executed it."

Why, then, is it, let me ask, that fraud, corruption concealment and crime, are charged upon this respondent, with regard to a transaction, in which the person most interested in detecting such fraud, has, after full investigation, declared that no imposition was practised on the occasion?

And the said Nathaniel W. Williams, for plea to the said fourth, fifth and sixth articles of impeachment, saith, that he is not guilty of any high crime or misdemeanor, as in and by the said articles is alleged, and this he prays, may be inquired of by this honorable court, in such manner as law and justice may require.

Respondent has now presented to this honorable court, his answer to the various charges preferred against him by the House of Representatives, for supposed *high crimes* and *misdemeanors*, not in as full and ample a manner as he would have desired, had time and circumstances enabled him to procure all the necessary documents and testimony on which to rely in his defence. Thus prepared, he submits his case to the consideration of your Honorable body, with an humble confidence, that He who rules the destinies of men and things, will so direct your councils, that impartiality, wisdom and justice will result from your deliberations, and magnanimity, moderation and forbearance, distinguish your proceedings on this, (to him) most momentous occasion. In thus appearing before your Honorable body, he would not be understood as claiming an exemption from the errors and infirmities, incident to frail humanity—in this, he, in common with you, and every human being, referring to all past experience and wisdom, must admit numerous imperfections, requiring the exercise of that charity due to, and demanded by, us all. And he would here ask, with the utmost sincerity of purpose, who it is, that could bear the scrutiny of talents and of time, stimulated by the powerful incentives of malice and revenge, into the numerous acts, the follies and indiscretions of a whole life, amid the changes and vicissitudes attendant thereon. Applying, then, the sacred rule, "judge ye as ye would be judged,"—this respondent appears at your bar, protesting in

the name and presence of that tribunal, which sits enthroned in cloudless majesty on high, and before which, at no distant period, we all must stand.

That in his official capacity, and while presiding in the courts of Tennessee, he has in all things, endeavored to conform to law and justice, and that fraud, corruption, partiality, prejudice, wilful negligence, or inattention to any of the duties required of him, as a judge of said courts, have been carefully avoided; and that he has in all things, according to his best abilities, discharged his duty faithfully and honestly to his country.

Feeling thus assured of the purity of his intentions, respondent approaches your Honorable body, with full confidence, that your deliberations on this occasion, when recorded in the faithful page of history, will not cause the blush of shame to mantle the cheeks of any member of this Honorable court, when the occurrences and proceedings on the present occasion shall be brought in review; and that the decisions now made, may, by their justice and wisdom, serve as guides to those who succeed us, when all the actors in the present scene, with the exciting causes, and the aiders and abettors in this prosecution, shall have vanished from the stage of life, and cease to exist, save only in the memory of man.

Justice is the soul of political liberty, the philosophy of politics, and the religion of government.

The people of Tennessee, in whose name, and with whose money, these proceedings are now conducted, are now intently looking on—and although, an humble individual stands before you in the attitude of a defendant, against accusations calculated and designed to consign him to disgrace and ruin, and to destroy the hopes and prospects of a young and helpless family, endeared to him

by all the sacred ties of nature, he yet stands before you, confiding in his innocence, relying on your justice, and trusting in your magnanimity:—He does this, not so much because the grand inquest of the people, after having all the facts before them, and to pass their judgment between the accusers and the accused—a judgment too, which, although it may for a time be led astray by the wily arts of intrigue and deception, will, in the end, be pronounced, in a voice which will be heard louder than the thunder's roar, by the guilty and offending; but because he is aware, that there is yet a higher tribunal, before which, all our secret thoughts appear, and in the presence of the Great Judge, he now submits his case to your decision.

NATH. W. WILLIAMS.

November 18th, 1829.

Mr. Turney, on the part of the managers, moved the court to allow them until Monday next, to file a replication to the answer and pleas of the defendant; which was granted.

Mr. Gibbs, as counsel for respondent, notified the managers that he would, on Monday next, renew the motion made by defendant's counsel on Wednesday last, that the clerk of the House of Representatives, be required to furnish the defendant with a copy of the testimony given before the House or its committee, with reference to the several facts and charges set out in the articles of impeachment, or permit the defendant to take a copy thereof.

Ordered, that this court adjourn until Monday next, 10 o'clock, A. M.

NEWTON CANNON, President,

WILL. K. HILL, Cl'k.

MONDAY, NOVEMBER 23rd, 1829.

The court of impeachment met at the hour of 10 o'clock, A. M.

The managers on the part of the House of Representatives, and also the respondent and his counsel being present—

Mr. Martin, on behalf of the managers on the part of the House of Representatives, then proceeded to read the following replication to the answer and pleas of the said respondent, viz.

REPLICATION,

By the House of Representatives of the General Assembly of the State of Tennessee, to the answer and pleas of Nathaniel W. Williams, Judge of the third Judicial Circuit of the State of Tennessee, to the articles of impeachment exhibited against him by the House of Representatives on the 3rd day of November 1829.

The House of Representatives of the General Assembly of the State of Tennessee, have considered the answer and pleas of Nathaniel W. Williams, Judge of the third judicial circuit of the State of Tennessee, to the articles of impeachment against him by them exhibited, in the name of themselves, and of all the people of the State of Tennessee; and reply,

That the said Nathaniel W. Williams did in fact commit the numerous acts of omission, negligence, misbehaviour and corruption in office, of which he stands accused.

And the House of Representatives, in full confidence of the truth and justice of their accusation, do aver their charge against the said Nathaniel W. Williams, as by them set forth in the said articles of impeachment to be true; and that, the said Nathaniel W. Williams is guilty as he stands impeached; which the House of Representatives

are ready to verify and proye, as this honorable court shall direct

House of Representatives, November 23rd, 1829.

Read and unanimously adopted.

EPHRAIM H. FOSTER,

Speaker of the House of Representatives.

Attest. THOMAS J. CAMPBELL,

Clerk of the House of Representatives.

The respondent in proper person submitted the following affidavit, to wit:

STATE OF TENNESSEE
vs:
NATHANIEL W. WILLIAMS,

This defendant makes oath that he is informed that the House of Representatives of the State of Tennessee, have taken in writing the evidence and the names of the witnesses before them in relation to the supposed high crimes and misdemeanors set forth in the articles of impeachment. He is advised by his counsel that it is, or may be, important for his defence, to have a copy of said documents. He has applied through his counsel to the Speaker of the House of Representatives, and also to their clerk for a copy, or for leave to examine the same, which has been refused. He has also caused application to be made to the chairman of the committee for a copy, which has also been refused, as the defendant has been informed and believes. This defendant is therefore driven to the necessity of applying to this court for an order upon the officers above referred to, or to some one of them, to permit him to examine said documents, and take a copy therefrom, or that he be furnished with a full and complete copy by the proper officer, or to make such other order in relation to said evidence as may seem best in the opinion of this honorable court.

NATHANIEL W. WILLIAMS.

Sworn to in open court, 23rd Nov. 1829.

WILL. K. HILL, Clk.

After some time spent in argument, as well in support of as against the application contained in the foregoing affidavit, the motion was submitted to the court for their decision.

Whereupon the president propounded the question,

Will the court make the order asked by the respondent?

Which was negatived.

AYES— 1
NOES—18

Mr. Tipton voting in the affirmative,

And Mr. Cannon, Walker, Allen Burford, Cleveland, Frey, Gillespy, Graves, Greene, Holman, Huntsman, Johnson, Littlefield, Love, Lytle, M'Clellan, Smith and Webster in the negative.

And thereupon the court adjourned until Monday next, 10 o'clock, A. M.

NEWTON CANNON, President,
WILL. K. HILL, Clerk.

MONDAY, NOVEMBER 30th, 1829.

The court of impeachment met at the hour of ten o'clock, A. M. according to adjournment.

The managers on the part of the House of Representatives, and also the respondent and his counsel being present.

The defendant by his counsel, moved the court to continue this cause until Thursday next, on the ground that two of his counsel are employed in another court. * * * * *

And the question being submitted by the President,

Shall the motion prevail?

It was decided in the affirmative.

AYES—12.
NOES— 5.

Those who voted in the negative, are
Mr President, Allen, Graves, Greene, Webster—5.

Those who voted in the affirmative, are
Mr. Burford, Cleveland, Frey, Gillespy, Holman, Huntsman, Johnson, Littlefield Lytle, McClellan, Smith, Tipton—12.

Which said motion was granted.

NOTE BY THE PRINTER.—[A few words of this day's proceedings, and the whole of the proceedings of the two succeeding days, were so defaced by a fire which occurred in this establishment, as to be entirely unintelligible. There was, however, but very little done more than to meet and adjourn.]

THURSDAY, DECEMBER 3rd, 1829.

The court of impeachment met at the hour of ten o'clock, A. M. Mr. Cannon, President thereof in the chair; the respective members in their seats; the managers on the part of the House of Representatives, and the respondent and his counsel being present,

Mr. Gillespy moved the court to add to the record of Monday's proceedings, in relation to the ground taken by the defendant in the continuance of his cause, the words "said statement was in writing, and admitted to be true by the managers, and considered by them as of affidavit."

And the question thereon being taken, it was determined in favor of said motion.

AYES—11.
NOES— 4

Those who voted in favor of the motion are,
Mr. Burford Cleveland, Frey, Gillespy, Hol-

man, Huntsman, Johnson, Littlefield, Lytle, Tipton, Webster—11.

Those who voted against the motion, are

Mr. Allen, Cannon, Graves Greene—4.

So said motion prevailed.

It was moved by Mr. Gibbs as counsel for Jonathan Spyker, clerk of Franklin circuit court, who was at the B———— court under a subpœna, *duces tecum*, to produce the record of his court, purporting to be issued from the court, that said Spyker be discharged from said subpœna, because it was not issued by order of the court, and because it is irregular in all respects.

And after hearing arguments as well in support of, as against said application, the court suspended a decision thereon until to-morrow.

The honorable managers on the part of the House of Representatives, then proceeded to the examination of the testimony in support of the charges preferred against the respondent, and not having closed the testimony in support of the prosecution, it is ordered by the court that the further examination thereof be suspended, and that this court adjourn until to-morrow morning, 9 o'clock.

N. CANNON, Pres't.

Will. K. Hill, Clerk.

FRIDAY, DECEMBER 4, 1829.

The court of impeachment met at 9 o'clock, A. M.

Mr. Foster, one of the managers, discharged Jonathan Spyker from the *subpoena duces tecum*, and also as a witness on the part of the state.

Mr. Turney discharged Micah Taul from

subpoena duces tecum, and as a witness on the part of the state. His attendance still claimed on the part of the defendant by Mr. Gibbs, one of defendant's counsel.

Mr. Foster moved the court that a *subpoena duces tecum*, issue to Mr. Foster, commanding him to bring into court a deed from Thomas P. Taul and Caroline P. Taul his wife, to said Porter, for part of lot No. 89, in the town of Nashville, and the defendant's not requiring affidavit to be made on the application, it was ordered by the court that the subpoena issue accordingly.

Mr. P. S. Deckerd, a witness on the part of the state being under examination, the following question was propounded to him by Mr. Gibbs, one of defendant's counsel:

"Do you know, that after the report of the committee of investigation, Jacob C. Isaes, wrote a letter to H. L. Turney, instructing him to abandon one of the charges;

Which being objected to by the managers,

The question was thereupon put by the president;

Shall the same be asked and answered,

It was determined in the negative, there being no affirmative votes.

The negative votes were

Messrs. President, Allen, Burford, Cleveland, Frey, Gillespy, Graves, Greene, Holman, Huntsman, Littlefield, Love, Lytle, McClellan, Smith, Tipton and Webster—18.

Mr. Brady on the part of the managers, after the examination of P. S. Deckerd had closed, moved the court that said Deckerd be finally discharged from further attendance, which being objected to on the part of the defendant's counsel the discharge was not allowed.

Mr. John Goodwin, called and examined as a

witness on part of the state, and in the course of his cross examination, the following question was propounded by Mr. Balch—

"From your knowledge of the official character of the respondent, as an attorney practising before him and in his courts, do you believe him capable of deciding any cause or causes brought before him, corruptly"?

Which being objected to by the managers and insisted on by the counsel for the defendant;

It was ordered by the court that the same be put and answered.

Those who voted in the affirmative were

Messrs. president, Cleveland, Frey, Graves, Huntsman, Johnson, Littlefield, Love, McClellan, and Smith—10.

Those who voted in the negative were

Messrs. Allen, Burford, Gillespy, Greene, Holman, Lytle, Tipton and Webster—8.

At the close of the examination of said witness, he was finally discharged.

Rolla P. Rains called and examined on part of the state. Who, at the close of his examination was finally discharged.

Benjamin Deckerd called and examined. Who, after cross examination was finally discharged on the part of the managers, but was reclaimed by defendant.

The court then adjourned until tomorrow morning 9 o'clock.

N. CANNON, President.

WILL. K. HILL, Clerk.

SATURDAY, DECEMBER 5, 1829.

The court of impeachment met at 9 o'clock A. M. according to adjournment.

Ordered, that at each meeting of the court the names of the members be called over by the clerk in alphabetical order, before proceeding to business.

On calling the roll this morning, all the members answered to their names except Mr. Walker who is absent from indisposition.

James Campbell, called on the part of the state and examined.

During the progress of whose examination Mr. Foster on the part of the managers introduced the record in the case of Leroy May against Frederick A. Ross, Lessee, and having read a part of said record, moved the court to dispense with its further readings; offering at the same time, to the counsel for the respondent, the record for their inspection and benefit, at their rooms or elsewhere.

The counsel for the defendant objected to the reading of any part of said record as evidence, unless the *whole* be read.

Whereupon the question,

Shall the whole of said record be read, was submitted to the court by the president, and determined in the affirmative.

AYES—18
NOES——

Whereupon it was ordered by the court that the whole of said record be read.

The managers, propose to prove (by parol) by the witness James Campbell, what was the decision of the respondent, in the case of Ross Lessee *vs.* Leroy May, depending in the circuit court of Franklin county, at July term 1824.

Which proof was objected to by the defendant's counsel, on the ground that it is charged, and only charged in the articles of impeachment that the respondent decided said cause with partiality to persons and parties, on the trial of

said cause, at the July term of said court 1825.

The argument of counsel on both sides, on the question thus raised, being concluded.

On motion of Mr. Huntsman it was ordered that this court adjourn until Monday next 9 o'clock A. M.

N. CANNON, President.

WILL. K. HILL, Clerk.

MONDAY, DECEMBER 7, 1829.

The court of impeachment met at the hour of 9 o'clock A. M. according to adjournment.

The roll being called in alphabetical order, all the members answered to their names, except Mr. Walker who was absent from indisposition.

The managers on the part of the House of Representatives, moved the court to amend the record of Saturday last, in relation to the question argued and submitted in the case of Ross' Lessee against Leroy May, and upon which the court had not decided, by substituting therefor the following, to wit:

"The state having read a copy of the record of the suit of the Lessee of Ross, vs. Leroy May in which it appeared the Judge had charged the Jury that the statute of limitations would operate in favor of a possession as well against a claimant, who held by entry only, as against him who held by grant: offered to prove by parol, (it not appearing by said record, that a previous trial in said suit in 1823 which occurred before the trial of the suit of Lessee of Henderson vs. Sampson Williams) the Judge had given to the Jury the same and an exactly similar charge;

which proof was objected to by the counsel of the accused, upon the grounds that the articles of impeachment, charged, stated and referred to the case aforesaid, and the decision thereupon, at the July term of said court 1825, and at no other time, which statement of said case and the decision thereupon is put down, in said articles by way of inducement to said charge, or as forming a material and component part of said charge of partiality, because, said evidence is calculated to take the defendant at surprise—the articles not having given notice of any other decision made at any other time."

The counsel for the defendant agreeing thereto, the foregoing was received in lieu of the said proposition submitted on Saturday;

Whereupon,

Without further argument, the question was submitted to the court for their decision; who were unanimous in the opinion that the proof should be admitted.

It was therefore ordered by the court, that said testimony be allowed.

The examination of James Campbell a witness on the part of the State, was resumed, in the course of whose cross examination, defendant's cousel asked the witness if Hopkins L. Turney had not thrown every difficulty in the way of the Judge in getting along with the business; and afterwards, make public speeches to excite public odium against him the said Judge, for not doing the business of the court. This being objected to by the managers, it was submitted to the court; who thereupon decided, that the questions should be asked and answered.

Nathan Greene, a witness on the part of the State, was called and examined—who, at the close of his examination on the part of the state, was

discharged by the managers, but retained by the defendant.

Nathan Haggard, a State Witness was called and sworn, and his examination not being closed it was ordered that this court adjourn till to-morrow 9 o'clock A. M.

NEWTON CANNON, President.

WELL. K. HILL, Clerk.

TUESDAY DECEMBER 8, 1829.

Court met at the hour of 9 o'clock A. M. according to adjournment.

The president and gentlemen of the court, except Mr. Walker who was absent from indisposition, the managers on the part of the House of Representatives, and also the respondent and his counsel being present.

John Handly, a witness on the part of the state, was examined, during whose cross examination the following question was propounded to him by Mr. Gibbs one of Defendant's counsel:

"Do you or do you not believe that the court adjourned on Wednesday evening to avoid punishing Mr. Turney for his harsh and insulting treatment of the court." Which being objected to by the managers, the question was thereupon submitted by the president,

Shall the same be answered,

And determined in the negative.

Ayes—Messrs. president, Burford, Cleveland, Graves and Johnson—5.

Negatives—Messrs. Allen, Frey, Gillespy, Greene, Holman, Huntsman, Littlefield, Love, Lytle, McClellan, Smith, Tipton and Webster—13.

The witness, John Handly, was at the close of his examination finally discharged.

William P. Anderson, a witness on the part of the State, was sworn and examined, who at the close of his examination was finally discharged.

The defendant's counsel moved the court, to make an order on the managers, to produce the examination taken before the committee of investigation and give the benefit of the same to defendant, he having first proved that a notice had been served upon the managers to produce the same; and arguments being offered as well in support of as against said motion, it was waived for the present by the counsel of the respondent.

Musadora B. Campbell, a witness on the part of the state was examined, at the close of which she was finally discharged.

Henry H. Adkinson, a witness in behalf of the State, was examined during whose examination, Mr. Foster on the part of the State, submitted the following:

"It was on the part of the State, attempted to be proved, after having proved as alleged in the first article of the impeachment, that respondent failed to hold the circuit court, at Overton court house at March term 1824. That Respondent had omitted and failed to hold the court at other times in said county; which being objected to by defendant's counsel, the sense of the court was thereupon taken, who were unanimous in the opinion, that said proof ought not to be admitted. The examination of the witness Henry H. Adkinson being closed he was finally discharged."

Nathan Haggard, a witness on the part of the State, who was under examination at the adjournment of the court on last evening, was again call-

ed and examined, during whose examination, the managers on the part of the house of representatives offered to read in evidence, the record of the suit of Thomas T. Thompson's heirs, *vs.* Little and Holladay, which was objected to by defendant's counsel; because from said record it appeared, that the suit was not tried at August term 1828, as alleged in the articles of Impeachment. The question, was submitted, but the sense of the court not being taken thereon, it was ordered that this court adjourn until to-morrow morning, 10 o'clock.

N. CANNON, Pres't.

WILL. K. HILL, Clerk.

WEDNESDAY DECEMBER 9, 1829.

Court met at the hour of 10 o'clock A. M. according to adjournment.

The president and members of the court except Mr. Walker and Mr. Graves who were absent from indisposition, the managers on the part of the house of representatives and also the respondent and his counsel being present.

The court proceeded to the consideration of the question submitted for their decision on last evening, in relation to the reading as evidence, the record of the suit of Thomas T. Thompson's heirs *vs.* Little and Holliday's, and thereupon the question was taken,

Shall said record be read, and determined in the negative.

Ayes Messrs. Allen, and Love—2.

Noes, Messrs. President, Burford, Cleveland, Frey, Gillespy, Greene, Holman, Huntsman, Johnson, Littlefield Lytle, McClellan, Smith, Tipton and Webster—15.

The examination of Nathan Haggard, a witness on the part of the State, was again resumed, during whose cross examination, the following question was propounded by Mr. Gibbs, one of respondent's counsel:

"Whether Samuel Turney, a member of the Legislature, did not state to him that himself and Hopkins L. Turney another member, his brother, had not agreed to impeach and remove Judge Williams and Col. Rodgers the Solicitor from office, and that he (the witness) was to be made the successor of one of said officers, and were not those conversations during the canvass last Summer and before and since?"

This being objected to by the managers, the proposition was submitted to the court for their decision, and thereupon the question was taken,

Shall the interrogatories be answered, and decided in the negative.

Ayes—Messrs. President, Allen and Huntsman—3.

Noes—Messrs. Burford Cleveland, Frey, Gillespy, Greene, Holman, Johnson, Littlefield, Love, Lytle, McClellan, Smith, Tipton, Webster —14.

Mr. Gibbs, then propounded the following question to the witness:

"Have you not told other persons, that the respondent would be broke? and have you not told other persons, that Samuel Turney had said to you, that you should be supported for the vacant Judgeship."

This being also objected to by the managers, the question was thereupon taken,

Shall the witness answer thereto? and decided in the negative.

Ayes——Messrs. President, Allen, Gillespy, Huntsman, Smith—5.

Negatives—Messrs. Burford, Cleveland, Frey,

Greene, Holman, Johnson, Littlefield, Love, Lytle, M'Clellan, Tipton and Webster—12.

Defendant's counsel propounded the following interrogatory to the witness.

"Have you not said to some persons, that you would support no man for the legislature before the last elections, that would not impeach and break Judge Williams."

Which being also objected to by the managers, it was submitted to the court for their decision;

And thereupon the question being taken,

Shall the same be answered by the witness?

It was also determined in the negative.

Ayes—Messrs. President, Allen, Cleveland, Gillespy, Huntsman, Johnson and Smith—7.

Noes—Messrs. Burford, Frey, Greene, Holman, Littlefield, Love, Lytle, McClellan, Tipton and Webster—10.

Mr. Turney, one of the managers, discharged John Rice, Conrad Hulvey and John B. McCormack from further attendance as witnesses on the part of the State.

The attendance of John B. McCormack was continued by defendant.

Wallis Estill, a witness on the part of the state, was called, examined, and finally discharged.

William Estill, a witness on the part of the state, was examined and finally discharged.

David Ames, also a witness on the part of the state, was examined and finally discharged.

Mr. Foster notified the court and defendant's counsel that the testimony in chief was closed on the part of the State.

Whereupon John B. McCormack, a witness discharged by the managers, was called by defendant's counsel and examined; in the course of whose examination, the witness stated he had practised before the respondent, as a lawyer, seven or eight years.

The defendant's counsel; Mr. Gibbs, asked the witness to state to the court, whether the respondent was an honest, upright and impartial Judge in his opinion.

The managers objecting thereto; the sense of the court was thereupon taken, and the question being submitted by the president,

Shall the witness answer said question, it was decided in the affirmative.

Ayes—Messrs. President, Allen, Burford, Cleveland, Frey, Gillespy, Huntsman, Johnson, Littlefield, Love, McClellan, Smith—12.

Noes—Messrs. Green, Lytle, Tipton and Webster—4.

Mr. Gillespy, a member of the court, offered the following as an additional rule for the government of the court.

That no argument be heard upon any point arising as to the admission of testimony, until the question be submitted in writing.

And the sense of the court being thereupon taken, the said rule was adopted.

Court then adjourned until to-morrow morning 9 o'clock.

NEWTON CANNON, President,
WILL. K. HILL, Clerk.

THURSDAY, DECEMBER 10th, 1829.

Court met at the hour of 9 o'clock, A. M. according to adjournment,

The President and members of the court (except Mr. Walker and Mr. Graves, who were absent from indisposition,) the managers on the part of the House of Representatives, and also the respondent and his counsel being present;

Alexander McCall was introduced by defen-

dant, and Mr. Gibbs proposed to read a power of attorney for the conveyance of real estate, and to prove by him that the examination of his lady (who executed the same) separate and apart from him, had been taken at Major Helm's tavern in Carthage, by the Judge, during the session of the court, and when it was open at April term, 1828, and to shew that the entry in court was made by the clerk in substance the same as that stated in the articles of impeachment, and in order to shew to the court, that respondent's construction of the acts of Assembly had been formed long before the time of taking the privy examination of Caroline P. Taul, and in order to rebut the idea of any corruption in said transaction.

Which being objected to by the managers, the question was thereupon put by the President,

Shall the same be read and the questions answered?

And determined in the affirmative.

Ayes—Messrs. President, Allen, Burford, Cleveland, Huntsman, Johnson, Littlefield, Love, Smith and Tipton—10.

Negatives—Mr. Frey, Gillespy, Greene, Holman, Lytle, McClellan, and Webster—7.

The witness was thereupon examined and discharged.

George C. Hays, Henry Hereford and James Gray Jones, witnesses on behalf of the respondent, were called, examined, and finally discharged.

John B. McCormac was again called, by whom the respondent's counsel proposed to prove, that Nathan Haggard, (a witness who had been introduced on the part of the state) had told him, McCormack, that Samuel Furney, a member of the legislature had proposed to him, Haggard, or stated to him, that Judge Williams should be impeached and removed from office, and that the

witness, Haggard, should be made Judge, and that said conversation was last summer.

The respondent's counsel also proposed to prove that Haggard had afterwards aided in hunting up evidence against the Judge, and that he had before been against Turney's election, and afterwards became his supporter.

This was objected to by the managers, and the question was thereupon submitted to the court for their decision.

Whereupon the question was put by the president,

Shall the witness be permitted to depose to said facts?

And determined in the affirmative.

Ayes—Messrs. President, Allen, Burford, Cleveland, Frey, Gillespy, Greene, Holman, Johnson, Littlefield, Love, Lytle, McClellan, Smith and Tipton—15.

Negatives—Messrs. Huntsman and Webster—2.

The witness was then examined and discharged.

The managers discharged Josiah F. Morford from further attendance as a witness on the part of the state.

John B. Rogers, witness on behalf of respondent, was examined, and finally discharged.

James T. Quarles [and] William Armstrong, respondent's witnesses, were examined and discharged.

William Armstrong was again called by respondent's counsel.

Whereupon Mr. Balch propounded to him the following:

Do you know that Mrs. Lyle and her husband executed a deed for land belonging to her, and if you do, state how her privy examination was taken, and by what Judge.

And this being objected to by the managers, on

the ground that the deed itself should be produced:

The question,

Shall the witness answer to said interrogatories?

Was thereupon had and determined in the negative.

Ayes—Messrs. President, Cannon, Allen, Cleveland, Holman and Johnson—5.

Noes—Messrs. Burford, Frey, Gillespy, Greene, Huntsman, Littlefield, Love, McClellan, Smith, Tipton and Webster—11.

The witness was again discharged.

John Jett, William Locke, John W. Simpson, Elijah D. Robbins, John Hall, Robert L. Caruthers, Joseph C. Gill and Thomas Stewart, witnesses on the part of the respondent, were examined and finally discharged.

The court then adjourned until tomorrow morning 9 o'clock.

N. CANNON, President.

WILL. K. HILL, Clerk.

FRIDAY, DECEMBER 11, 1829.

Court met at the hour of 9 o'clock A. M. according to adjournment.

The president and members of the court, except Mr. Walker, Mr. Graves and Mr. Littlefield, who were absent from indisposition, the managers on the part of the House of Representatives, and also the respondent and his counsel being present.

William Stroud, Parry W. Humphreys and Edward Scott, witnesses on the part of the respondent were examined and discharged.

Nathan Ewing, a witness on behalf of the defendant, being under examination, he was asked by Mr. Gibbs, one of respondent's counsel, wheth-

or it had not been the practice of the Judges of the old district courts, the federal court and the territorial court, to take the acknowledgment of deeds out of court, from the first organization of the courts of Tennessee.

This being objected to by the managers, the question was thereupon had,

Shall the witness be permitted to answer to said interrogatories,

And decided in the negative.

Ayes—Mr. President, Allen Holman, Huntsman, Johnson and Smith—6.

Noes—Mr Burford, Cleveland, Frey, Gillespy, Greene, Love, Lytle, McClellan, Tipton and Webster—10.

Whereupon the further examination of the witness was suspended.

Andrew Hays, John McNairy, James S. Lacey, William Carroll and Thomas Washington, witnesses on the part of the defendant, were examined and discharged.

The respondent's counsel, Mr. Gibbs, proposed to prove by witnesses who had examined the records of the supreme court at Sparta and at Nashville, that a greater proportion of causes had been affirmed, for the last five years, decided by Judge Williams, than by the other Judges.

This evidence was proposed to be given by Anthony Dibrell and Jacob McGavock,

And was objected to by the managers, because there was no copy of the records produced, and the proof if received, would be proving by parol, that which could and *should* be established by record testimony.

And the question thereupon being taken.

Will the court receive said proof?

It was determined in the negative.

Ayes—Messrs. President and Allen—2.

Noes—Messrs. Burford, Cleveland, Frey, Gil-

lespy, Greene, Holman, Huntsman, Johnson, Love, Lytle, McClellan, Smith, Tipton and Webster—11.

Oliver B. Hayes, Robert White and John Catron, were examined as witnesses on belalf of the respondent, and discharged.

Mr. James Rucks, a witness for defendant, being under examination, he was asked by respondant's counsel,

If, upon the trial of the case of Henderson's lessee, *vs.* Sampson. Williams and Cox, there was any evidence given to shew that the defendants in that suit had been seven years in the possession of the land in controversy, before the commencement of the suit.

This being objected to by the managers, because if such facts were proven or not, it would appear by the bill of exceptions contained in the record which is now in court, and therefore the parol testimony offered is inadmissible.

The question was thereupon taken,

Shall the proof be admitted?

And decided in the negative.

Ayes—Messrs. Cannon, Cleveland and Holman—3.

Noes—Messrs. Allen, Burford, Frey, Gillespy, Greene, Huntsman, Johnson, Love, Lytle, McClellan- Smith, Tipton and Webster—13.

Mr. Rucks was then discharged from further attendance as a witness.

Archibald Lytle and Isham Perkins were examined on behalf of the defendant, and finally discharged.

The managers discharged Sampson Williams, Madison Fisk and Isaac Taylor from further attendance as witnesses on the part of the state.

James T. Holman a witness on the part of the respondent being under examination, the follow-

ing question was propounded to him by Mr. Gibbs, one of respondent's counsel.

"Did Samuel Turney, a member of the legislature, tell you, after the elections were over, last summer, or any person in your presence, that himself and his brother, Hopkins L. Turney, had agreed, or were going to impeach Judge Williams and Col. Rodgers, when the legislature met, or words to that effect."

This was objected to by the managers, on the ground of Samuel Turney's not being a witness in this cause, and no party to the record

Any declarations therefore made by him, are, in the opinion of the managers, inadmissible.

It was thereupon submitted to the court, who decided unanimously, that said question ought not to be answered.

Mr. Gibbs then asked the witness "if he did or did not hear Hopkins L. Turney state that he would impeach Judge Williams, and that he would make every other object of legislation bend to the Judge's removal from office, or words to that effect."

This being also objected to by the managers, and submitted to the court for their decision,

They were unanimous in the opinion that the same was illegal, and ought not to be admitted.

The witness was thereupon discharged.

Edward Rollings and Pleasant Henderson were examined as witnesses on the part of the defendant, and discharged.

Matthew L. Dixon, a witness on the part of the defendant, being under examination, the following interrogatory was asked by defendant's counsel:

"Was Thomas P. Taul shot, and was he shot by the person named in his will, made at the time of the execution of the deed to Deckerd, before he revoked said will?"

Which was objected to by the managers.

And thereupon the question

Shall the witness answer said interrogatory? was put by the president, and determined in the negative.

Ayes—Messrs. Huntsman and McClellan—2.

Noes—Messrs. President, Allen, Burford, Cleveland, Frey, Gillespy, Greene, Holman, Johnson, Love, Lytle, Smith Tipton and Webster—14.

Mr. Gibbs, one of respondent's counsel, then moved the court to reject as evidence the last will and testament of Thomas P. Taul, of the 24th of August, 1829, and read by the managers;

Which motion was sustained.

Ayes—Messrs. President, Allen, Burford, Cleveland, Frey, Gillespy, Greene, Holman, Johnson, Love, Smith, Tipton and Webster—13.

Noes—Messrs. Huntsman, Lytle, and McClellan.

The witness, Matthew L. Dixon, at the close of his examination was finally discharged.

Court then adjourned until Monday morning 9 o'clock, A. M.

N. CANNON, President.

WILL. K. HILL, Clerk.

MONDAY, DECEMBER 14, 1829.

Court met at the hour of 9 o'clock A. M. according to adjournment.

The president and gentlemen members of the court except Mr. Walker, Mr. Graves and Mr. Littlefield, who were absent from indisposition, the managers on the part of the House of Representatives, and also the Respondent and his counsel being present.

John H. Ray and Micah Taul were examined as witnesses on the part of the defendant and discharged.

The respondent by his counsel then informed the court and gentlemen managers, that the testimony in support of his answer and pleas to the articles of impeachment exhibited against him, was closed.

Whereupon,

Mr. Overton one of the honorable managers on the part of the House of Representatives, opened the argument in support of the prosecution, and not having closed; it was at his request, and on motion of Mr. Huntsman, ordered by the court that further argument be suspended until to-morrow morning 9 o'clock, to which time the court adjourned,

N. CANNON, President.

WILL. K. HILL, Clerk.

TUESDAY DECEMBER 15, 1829.

Court met at the hour of 9 o'clock A. M. according to adjournment.

The president and gentlemen of the court except Mr. Walker, Mr. Littlefield and Mr. Graves, who were absent from indisposition, the managers on the part of the House of Representatives, and also the respondent and his counsel being present.

On motion of Mr. Turney, it was ordered by the court that all witnesses in this cause on the part of the state be discharged from further attendance.

Mr. Overton, resumed the argument in support of the prosecution, and having closed was followed by Mr. Foster of Williamson, Mr. Dunlap of

Henry and Mr. Huling; who having also closed, it was, on motion of Mr. Johnson, ordered that this court adjourn until to-morrow morning 10 o'clock.

N. CANNON, President,

WILL. K. HILL, Cl'k.

WEDNESDAY, DECEMBER 16, 1829.

Court met at the hour of 10 o'clock according to adjournment.

The president and gentlemen members of the court except Mr. Walker and Mr. Graves, who were absent from indisposition; the managers on the part of the House of Representatives, and also the respondent and his counsel being present.

The argument in support of the prosecution was continued by Mr. Brady, who having closed, Mr. Balch and Mr. Peyton addressed the court in support of the answer and pleas of the respondent to the articles of Impeachment preferred against him by the house of representatives, and the latter not having concluded, it was ordered by the court that further argument be suspended and that this court adjourn until to-morrow morning 9 o'clock.

N. CANNON, President.

WILL. K. HILL, Clerk.

THURSDAY DECEMBER 17, 1829.

Court met at the hour of 9 o'clock A. M. according to adjournment.

The president and gentlemen members of the

court except Mr. Walker and Mr. Graves, who were absent from indisposition, the managers on the part of the state, and also the respondent and his counsel being present.

Mr. Yerger addressed the court in support of the answer and pleas, of the respondent to the charges preferred against him by the House of Representatives; and having concluded, it was ordered by the court that the further argument of this cause be suspended, and that the court adjourn until to-morrow morning 9 o'clock.

N. CANNON, President.

WILL. K. HILL, Clerk.

FRIDAY, DECEMBER 18, 1829.

Court met at the hour of 9 o'clock, according to adjournment.

The president and gentlemen members of the court except Mr. Walker and Mr. Graves who were absent from indisposition; the managers on the part of the house of representatives, and also the respondent and his counsel being present.

House of Representatives
vs.
Nathaniel W. Williams. } Impeachment.

Mr. Gibbs proceeded to the further argument of the issue joined, in support of the answer and pleas of the respondent, and not having closed, it was ordered by the court the further argument of this cause be suspended, and that this court adjourn until to-morrow morning 10 o'clock.

N. CANNON, President.

WILL. K. HILL, Clerk.

SATURDAY, DECEMBER 19, 1829.

Court met at the hour of 10 o'clock A. M. according to adjournment.

The president and gentlemen members thereof, except Mr. Walker and Mr. Graves, who were absent from indisposition, the managers on the part of the house of representatives, and also the respondent and his counsel being present.

House of Representatives
vs.
Nathaniel W. Williams. } Impeachment.

The managers on the part of the House of Representatives, and the counsel of the accused, then proceeded to the further argument of the issue joined; and not having concluded it was ordered by the court that the further argument of this cause be suspended, and that this court adjourn until Monday next 9 o'clock A. M.

N. CANNON, President.

WILL. K. HILL, Clerk.

MONDAY, DECEMBER 21, 1829.

Court met according to adjournment. The President and gentlemen members thereof, except Mr. Walker and Mr. Graves who were absent from indisposition, the managers on the part of the House of Representatives and also the respondent and his counsel being present.

House of Representatives,
vs.
Nathaniel W. Williams. } Impeachment.

The managers on the part of the House of Representatives and the counsel of the respondent proceeded to the further argument of this issue joined and having closed the said argument, it

was ordered that this court suspend delivering an opinion as to the guilt or innocence of the respondent until to-morrow evening 4 o'clock; and that this court adjourn until to-morrow morning 10 o'clock.

N. CANNON, President.

WILL. K. HILL, Clerk.

TUESDAY, DECEMBER 22, 1829.

Court of impeachment met at the hour of 10 o'clock, A. M. according to adjournment, Mr. Cannon President thereof in the chair, the respective members in their seats except Mr. Walker and Mr. Graves, who were absent from indisposition,

House of Representatives
vs.
Nathaniel W. Williams. } Impeachment.

Mr. Tipton moved the court to adjourn until 3 o'clock this day.

Mr. Gillespy moved an adjournment until Thursday next, 10 o'clock A. M.

And the question of precedence was submitted by the president to the court,

And determined in favour of Mr. Tipton's motion.

Those who voted to give Mr. Tipton's motion precedence are,

Mr. President, Burford, Frey, Greene, Holman, Love, McClellan, Tipton and Webster—9.

Those who voted against it are,

Messrs. Allen, Cleveland, Gillespy, Huntsman, Johnson, Littlefield and Lytle—7.

Whereupon,

The question was taken,

Will the court adjourn until 3 o'clock this day,

And determined in the negative.

AYES— 8
NOES— 8

Those who voted in the affirmative are,

Messrs. President, Frey, Greene, Holman, Love, McClellan, Tipton and Webster—8.

Those who voted in the negative are,

Messrs. Allen, Burford, Cleveland, Gillespy, Huntsman, Johnson, Littlefield and Lytle—8.

And so said motion was overruled.

Mr. Burford moved the court to set aside the order made yesterday, requiring the court to deliver an opinion as to guilt or innocence of the respondent on this day at 4 o-clock; and the question thereon being taken,

Will the court set aside said order?

It was decided in the negative.

Ayes—Mr. Burford, Gillespy, Huntsman, Littlefield and Lytle—5.

Noes—Mr. President, Allen, Cleveland, Frey, Greene, Holman, Johnson, Love, McClellan, Tipton and Webster—11.

And so said motion was overruled.

Mr. Gillespy then moved the court to adjourn until Thursday 9 o'clock A. M., then to deliver the opinion of the court as to to the guilt or innocence of the respondent, alleging that he could not sooner in justice to himself, be ready to give his opinion;

And the question thereon being taken,

Will the court adjourn until Thursday next?

It was determined in the negative.

Ayes—Mr. Allen, Burford, Cleveland. Gillespy, Huntman, Johnson, Littlefield and Lytle—8.

Noes—Mr. President, Frey. Greene, Holman, Love, McClellan, Tipton and Webster—8.

And so said motion was also overruled.

Mr. Frey them moved the court to adjourn until half past 3 o'clock this evening, which motion was sustained.

Whereupon,

It was ordered that this court adjourn until half past 3 o'clock, this day.

HALF PAST 3 O'CLOCK.

Court met according to adjournment.

The President and gentlemen members thereof in their seats, except Mr. Walker and Mr. Graves who were still absent from indisposition, the managers on the part of the House of Representatives, and the respondent and his counsel being present, and seated within the Bar of the court.

Mr. Gillespy moved the court to postpone the delivery of an opinion as to the guilt or innocence of the respondent on the articles of impeachment exhibited against him, and the issue joined between the House of Representatives, and the said Respondent, until 6 o'clock this evening, and that this court adjourn until that time, to meet in the hall of the House of Representatives—which motion was sustained.

Whereupon,

It was ordered that court adjourn until 6 o'clock, and to meet in the Representative hall.

6 O'CLOCK P. M.

Court met according to adjournment, Mr. Cannon President of said court in the chair, the respective members thereof in their seats except Mr. Walker and Mr. Graves, who were absent from indisposition. The managers on the part of the House of Representatives, and also the respondent and his counsel being present.

The 1st. article, and the specification under it were read;

And the question thereon being taken,

Is the said Nathaniel W. Williams guilty of the crimes and misdemeanors as therein alleged against him?

It was determined in the negative, by a unanimous vote.

The 2nd. article and the specification under it having been abandoned by the managers;

The 3rd. article and the 1st. specification thereof were then read;

And the question thereon being taken,

Is the said Nathaniel W. Willsams guilty of the crimes and misdemeanors charged in said 3rd. article and 1st. specification, in manner and form, as they are therein alleged against him?

The Ayes and Noes being taken, it was decided in the negative;

AYES—2.
NOES—15.

Those who voted guilty are,

Mr. Greene and Mr. Webster—2.

Those who voted not guilty are,

Mr. President, Allen, Burford, Cleveland, Frey, Gillespy, Holman, Huntsman, Johnson, Littlefield, Love, Lytle, McClellan, Smith and Tipton—15.

The 2nd. specification of the same article was then read,

And the question thereon being taken,

Is the said Nathaniel W. Williams guilty of the crimes and misdemeanors charged in said 2nd. specification, in manner and form as they are therein alleged against him.

It was determined in the negative.

AYES— 3.
NOES—14

The ayes and noes being taken,

Those who voted guilty, are,

Mr. Frey, Mr. McClellan, and Mr. Tipton—3.

Those who voted not guilty, are,

Mr. President, Allen, Burford, Cleveland, Gillespy, Greene, Holman, Huntsman, Johnson, Littlefield, Love, Lytle, Smith and Webster—14.

Articles 4, 5, and 6, were then read.

Mr. Tipton moved a division of the question, so as to take the vote separately upon each.

And the question thereon being taken,

Will the court separately take the question on said articles?

It was determined in the affirmative.

AYES—10
NOES— 7

Those who voted in the affirmative, are,

Mr. Burford, Frey, Gillespy, Holman, Huntsman, Love, Lytle, McClellan, Tipton and Webster—10.

Those who voted in the negative are,

Mr. President, Allen, Cleveland, Greene, Johnson, Littlefield and Smith—7.

And so said motion prevailed.

Whereupon the 4th article was again read,

And the question being taken,

Is the said Nathaniel W. Williams guilty of the crimes and misdemeanors charged in the said 4th article, in manner and form as alleged against him?

The ayes and noes being taken, it was determined in the negative.

AYES—10.
NOES— 7.

There not being a constitutional majority.

Those who voted guilty, are,

Mr. Allen, Frey, Gillespy, Greene, Holman, Love, Lytle, McClellan, Tipton and Webster—10.

Those who who voted not guilty, are,

Mr. President, Burford, Cleveland, Huntsman, Johnson, Littlefield and Smith—7.

The 5th article was then read;

And the question thereon being taken,

Is the said Nathaniel W. Williams, guilty of the crimes and misdemeanors charged in the said 5th article, in manner and form, as they are therein alleged against him?

It was determined in the following manner:

AYES—12.
NOES— 5.

Those who voted guilty, are,

Mr. Allen, Burford, Frey, Gillespy, Greene, Holman, Love, Lytle, McClellan, Smith, Tipton and Webster—12.

Those who voted not guilty, are,

Mr. President, Cleveland, Huntsman, Johnson and Littlefield—5.

The 6th article was then read;

And the question thereon being taken,

Is the said Nathaniel W. Williams guilty of the crimes and misdemeanors charged in the said 6th article in manner and form as therein alleged against him?

It was determined in the following manner:

AYES—12.
NOES— 5.

Those who voted guilty, are,

Mr. Allen, Burford, Frey, Gillespy, Greene, Holman, Love, Lytle, McClellan, Smith, Tipton and Webster—12.

Those who voted not guilty, are,

Mr. President, Cleveland, Huntsman, Johnson, and Littlefield—5.

The following are the opinions of Messrs. Littlefield, Smith and Burford, as delivered by them, on the 4th 5th and 6th articles of impeachment:

MR. LITTLEFIELD'S OPINION.

I had prepared my opinion upon the 4th 5th and 6th articles in connection; and as they were answered jointly, and issue taken thereon, I had no

idea that they would be severed. The opinion however is as applicable to the articles separately, as in connection with each other. The 4th article charges the Respondent with acting corruptly; the 5th and 6th articles (omitting the word "corruptly") charge him with unlawful and wilful misconduct, perpetrated with a design to defraud Caroline P. Taul and her heirs at law. Now I can perceive no difference between a direct charge of corruption and a charge of having prostituted his official authority, at the instigation of a favorite, for the purpose of defrauding a third person of his rights.

The 4th 5th and 6th articles, though differing slightly in form, are in substance the same. They charge the Judge with official misconduct: 1st. In taking the privy examination of Caroline P. Taul touching her voluntary execution of a deed to Benjamin Deckerd: 2d. In making a false certificate upon the back of said deed: 3rd. In causing a false record to be made of this transaction; and 4th. In directing the clerk of the court to omit reading the minutes respecting the execution and probate of the above deed. All of which acts are averred to have been done wilfully, corruptly and unlawfully, with intent to injure and defraud C. P. Taul and her heirs at law. Let us examine these specifications separately; and first with regard to the examination of Mrs. Taul. Mr. Taul, when in Nashville, had sold to Mr. Porter a part of a lot in Nashville which a collateral relation had devised to Mrs. Taul. Mr. Campbell became security to Mr. Porter, that Mrs. Taul should join in the conveyance. During the sitting of the circuit court of Franklin county at the July term 1828, Porter sent a special messenger to Campbell requesting him to attend to the execution of the deed by Mrs. Taul. Campbell, in answer to Porter, observed, that Mrs. Taul was

at that time very sick, but that he need give himself no uneasiness, as he would take care that the deed should be *properly* executed. In a subsequent conversation with Taul upon this subject, Campbell urged upon him the necessity that Mrs. Taul should immediately execute the instrument, and suggested that he (Campbell) would request the Judge to adjourn court and then proceed to his house and there take the privy examination of Mrs. Taul. Taul observed that *he* would attend to it; and accordingly on the 23d July and during the sitting of the court, he did apply to the Judge to take the privy examination of his wife. In compliance with his wishes the Judge left the bench, and without adjourning court, proceeded to the house of Campbell, and there, upon the privy examination of Mrs. Taul, satisfied himself that she had executed the deed to Porter voluntarily and without compulsion.—At the same time that the Judge examined Mrs. Taul respecting the deed to Porter, he also took her examination with regard to her execution of a deed of the remainder of the lot to Benjamin Deckerd. The Judge then returned to court, leaving both the deeds in possession of Taul. Taul, who entered the court house at the same time with the Judge, informed Campbell who had remained in the court house, that the Judge had taken the examination of his wife and requested Campbell to give him the form of a certificate, to be entered upon the back of the deed. Campbell, ignorant of the fact, that any deed but the one to Porter had been executed, dictated a form for the certificate, which he agrees is in substance the same as the certificates upon the back of the deeds.—Now if the Judge erred in taking the examination of Mrs. Taul at Campbell's house, as to her execution of the deed to Deckerd, his conduct was equally culpable in taking her examination with

regard to the deed to Porter. But this course was suggested by Mr. Campbell, an able and experienced lawyer, acquiesced in by Taul, another member of the bar, and acted upon by the Judge, in conformity with what had been his practice upon other occasions. If then the Judge misconstrued the law in this particular (and I am not prepared to say that he did not) it is evident that he erred in common with enlightened members of the bar, and with some of his brother Judges, for Judge stewart says, that if the Judge can appoint a commissioner to take the privy examination of a feme covert, he sees no reason why the Judge himself should not be the commissioner.—But although I consider the departure of the Judge from the strict letter of the law, as excusable when unconnected with other circumstances, yet, if it can be shewn that he was influenced by a desire to impose upon Mrs Taul, or that he had abused his official authority for the purpose of defrauding any person of his rights—in that case I should not hesitate to pronounce him guilty.—What are the facts with regard to Mrs. Taul? On this subject, the testimony of Benjamin Deckerd is conclusive. He enquired of Mrs. Taul, if she knew the effect of the deed she had executed? she replied in the affirmative and observed that Mr. Taul would execute a will giving the property to her relations after his death. Deckerd observed that a will was a revocable instrument; she replied that if she could not trust to the honor of her husband, she could have confidence in no one. It is further in evidence that she was fervently attached to her husband; that he was in low health, and unable to obtain a living by his profession, and that Mrs. Taul was anxious to place this property under his control, that he might have the means of subsisting without labor, after her

death, which event was expected shortly to take place.

The testimony upon this subject is ample and uncontradicted, and excludes the idea that in any step of this proceeding was an imposition practised upon Mrs. Taul by Judge Williams. But were not the heirs at law of Mrs. Taul deprived of some of their rights by the irregularity of the proceedings of the Judge? If they were, I confess that I have not been able to discover it.—Mrs. Taul possessed the lot in her own right, derived, not from the common ancestor of herself and Mrs. Campbell, but from a distant relation. She had the undoubted right to dispose of this property in any manner that she chose by deed and perhaps by will; and it is satisfactorily proved that it was her earnest wish to convey it to her husband. Now in carrying this design into execution, in what way was Mrs. Campbell injured, or of what right was she deprived? She was, to be sure, the heir at law of Mrs. Taul, and had Mrs. T. died intestate, would have inherited her estate; but is it pretended that, during the life time of Mrs. Taul, she was to be controlled by her sister in the disposition of her own property; or that Mrs. Campbell's rights were in any way affected by the deed to Deckerd? her expectations were probably defeated; but rights or claim upon the property she had *none*, and therefore could not be the subject of a fraud in any matter relating to it. The idea of fraud, then as practised either upon Mrs. Taul or her heirs at law, with the connivance of the Judge, being thus disposed of, we come next to the 3d. charge: That, of causing a false record to be made of this transaction. Now this record was made in exact conformity with the certificate entered upon the back of the deed, and if the Judge is excusable in the one case, he is for the same reasons to be excused

in the other. The 4th charge, and one that has been much labored, is, that the Judge directed the clerk of his court, to omit reading in open court the minutes of this transaction: The facts in proof are the following: On the morning of the 24th July, and just before the adjournment of the court, the clerk was reading the minutes, and when he commenced reading the entry respecting the deeds from Taul and wife, Taul, who stood by his side, stopped him and requested him to read no further. The clerk replied that it was his duty to read the minutes and he should go on. Taul again stopped him and in his usual tone of voice applied to the Judge to direct the clerk to omit reading the minutes, observing at the same time that this was a family matter, and that the Judge was acquainted with all the circumstances. The Judge, in compliance with the wishes of Taul, directed the clerk to omit reading the minutes, and the reading was accordingly dispensed with. Two questions here arise: 1st. did the Judge act contrary to law in omitting to have the minutes read in open court, and 2d. in so doing, was he influenced by improper or corrupt motives? The law of 1809, prescribing the time and manner of reading the minutes, requires that they should be read in open court; but it has been fully proved that some of the Judges, both of the Circuit and Supreme courts have, considered this law as directory rather than compulsory; and that on the last day of the term, it has been customary to have the minutes read at their chambers, and in some instances, the Judge has taken the record to his room and examined it by himself. Here again if the Judge had erred he has fallen into the same error with other members of the Bench; and unless some improper or corrupt motive is supposed to have actuated him, I must think him excusable. Now where is the proof of cor-

ruption, or what reason have we to presume it? *Taul* evidently desired to avoid publicity in this transaction, and his reasons for this are manifest. Perhaps he wished to avoid a scene, such as actually occured when Mr. Campbell first conversed with Mrs. Taul upon this subject. Possibly, *before* the deed was executed, he feared, that by the solicitations of her relations, she might be induced, contrary to her inclination and her judgment, to refuse to execute it; at all events we may reasonably suppose that he wished to protect his dying wife from the irritation consequent upon family quarrels. But none of these causes could operate upon the mind of the Judge. He was acquainted with the whole transaction; he knew that Mrs. Taul executed the instrument voluntarily; he knew that no third person's rights were implicated; that it was a family matter, an affair that concerned no person but Taul and his wife, and he also knew that when the deed was executed that it was irrevocable; the property had passed into the hands of Taul, and that neither privacy nor publicity could have any effect upon the transaction. Under these circumstances the Judge unguardedly signified his assent to the proposition of Taul, that the minutes should not be read. This might have been and possibly was an error of judgment; it was probably a misconstruction of the law, but I have been unable to discover any vestige of corruption.

Now I cannot believe that for an unsound opinion on a point of law, or for a mere error in judgment, that a Judge should be removed from office and his character irretrievably ruined. With this view of the case I am campelled to say that the Judge is not guilty of the various charges preferred against him in the 4th 5th and 6th articles of impeachment.

OPINION OF MR. SMITH,
IN THE CASE OF JUDGE WILLIAMS.

I will suggest briefly the reasons which influence the determination to which my mind arrives on the several articles of impeachment—

1. The first article charges Judge Williams with failing to hold the court for Overton county, at the March term, 1824. Upon this charge there is but little contrariety in the testimony; all the witnesses agree, that immediately previous to that court there had been considerable rain, and the streams were much swollen. Judge Williams had arrived at White Plains on Saturday evening, evidently with the intention of going to the court; and, although the evidence is, that he might have got there in safety, and that the difficulties were not so great as he imagined, yet the conclusion is satisfactory that he did not avoid going to the court from a wilful disregard of the obligations of his duty, but for reasons which, he conceived, rendered his course excusable. I am, therefore, for finding him not guilty of this charge.

2d. The next article under consideration is the third, which charges Judge Williams with partiality. The first specification relates to the non-suit in the case of Neighbors vs. Hereford, and the refusal to order one in the case of Brewer vs. Williams. In ordering the non-suit in the first case, it is not insisted that there was any thing wrong; but the charge is, that, in the case of Brewer vs. Williams, the Judge refused to order a non-suit, when by the application of the rule which was made to operate in the first case, he should have done so. The circumstances in relation to the two cases are not precisely similar, and in matters of discretion, where circumstances

vary the case, no person but the Judge, who was acquainted with all these circumstances, could decide safely how far the decision ought to be varied. In such cases I should not feel justified in determining against a Judge, unless the decisions complained of were a very gross departure from the ordinary rules of practice. The second specification is for partiality in deciding, in April 1825, against Sampson Williams, that the statute of limitations would not bar an entry. The decision, according to the evidence of Judge Green, was in conformity with what had always been understood to be the law on that subject; and, although the question had been argued before the Supreme Court several times, it had not been decided so as to settle the law. That he decided differently in Franklin county, both before and after the decision of this cause, is to be attributed to the reports by gentlemen of the bar as to what the Supreme Court had said on the subject, and to the unsettled state of the question.

3d. The next charge is that contained in the 4th, 5th and 6th articles of impeachment. Here it is charged that Judge Williams certified falsely on a deed, that he had taken the privy examination of a married woman in open court, and that he caused the certificate to be entered on the minutes of the Court, and then directed the clerk to pass over the reading such minutes, with a view to keep the same secret, and thereby defraud her heirs at law. The proof is, that the examination, if taken at all, was taken at a private house, a considerable distance from the court house; that it was certified by the Judge to have been taken in open court, and that the minutes were directed by the Judge not to be read. From the best consideration I have been able to give this case, and I have reflected intensely and painfully upon it, I have been forced to the conclusion that all this was

contrary to law, and that the Judge knew it to be so. He would not have certified it was done in court if he had not considered that it must so appear in order to make it good, and he must have known that the law directed the minutes to be read. I do not believe that Judge Williams knew of any fraudulent design of Taul; nor do I think he had a design to injure any person by what he did, but he suffered himself to be led astray by Taul, who, through his agency, secretly procured the deeds, and by not reading the minutes effected his design of getting the title to the property in himself. If a judge confides in another, and lends himself without examination to effect that which is wrong, and contrary to law, he must be answerable, because the law enjoins his duties upon him, and expects him to perform with diligence, and to act on his own judgment, and, therefore, if he does a thing which he knows is contrary to law, confiding in another who has a wicked design, and were excused because he did not have the wicked design, the consequence would be, that the Judges might trust the lawyers to write bills of exceptions containing nothing like the truth, and sign them without reading, or grant injunctions without reading the bills, in cases where none ought to be granted, and many other things that would produce the greatest possible confusion and mischief. In such cases no one could be punished—the lawyer would not be liable, and unless the Judge is punishable, all escape. With the greatest possible reluctance and unfeigned sympathy, I am constrained to find Judge Williams guilty upon this charge.

MR. BURFORD'S OPINION.

When called upon to vote in this case, I feel it a duty which I owe to the public, to the defendant as well as to myself, to give my views, and the reasons which influence me in the votes which I now have to give. The manner also, in which some of the charges are blended, and the opinions which I entertain on different parts of the same articles require an explanation as to my votes. In giving my opinion, I shall be brief, and confine myself alone to the articles and specifications in support of which, proof has been adduced.

In the first article, the defendant is charged with capriciously, wilfully and unlawfully, and in violation of his said office, of having failed and refused to hold circuit courts, and the first specification goes on to charge the defendant with having failed to hold a circuit court at Monroe, in Overton county on the second Monday in March, 1824. From the evidence adduced on this charge and specification, it appears that the Defendant left Sparta, White County, and arrived at the White Plains on his way to Monroe, on the Saturday evening before the court was to have been holden; it also appears that a very heavy rain fell that night, and next morning, so as to induce the defendant as well as others at that place to think it dangerous, if not impracticable, to proceed on to Monroe next morning, on account of the high waters; the defendant therefore turned his course by way of Carthage at which place he lived, and on his arrival at home, found one of his children very sick; and it having continued to rain the waters became very high, and as the defendant states in his answer, deterred him from proceeding on from home to Monroe, which to my mind he evidently intended, when he changed his route at White Plains, and could have reached there in

time to have *saved* that term of the court. To my mind the reasons for his non-attendance are perfectly satisfactory, I therefore acquit him of the first charge and specification.

The third article relates to partiality and prejudice to parties to causes tried before the defendant. and the first specification charges the defendant with partiality in the trial of a certain cause tried at April term of Smith circuit court 1825, wherein James Henderson was plaintiff and Williams and Cox were defendants, and that during the trial of said cause, a certain question of law became necessary to be decided, namely, whether the statute of limitations would run against an entry, and that the defendant in his charge to the Jury did charge that the statute of limitations would not run against an entry, &c.

From the evidence on this part of the case, it appears that at Franklin county circuit court on the trial of a cause at July term 1824, in the case of Frederick A. Ross vs. Leroy May, the defendant did charge that the statute *would* run against an entry, &c.—it also appears from the record as well as other evidence, that at April term of Smith Circuit Court, 1825, the same question became material to be decided in the case of Henderson vs. Williams and Cox, and that the defendant did charge that the statute of limitation would *not* run against an entry; it also appears that afterwards, to wit, at the Circuit Court held in and for Franklin county, at August term 1825, that on the 2d trial of the above cause of Frederick A. Ross vs. Leroy May, the defendant again charged that the statute *would* run against an entry—it also appears from the evidence that at all the trials before enumerated, the defendant was advised by the counsel that the decisions of the Supreme court were such as was made by the

defendant on the trial of the different causes; whether the decision of the Supreme Court had or had not been made on that point I do not think material in this part of the cause? But the question should be whether the defendant was induced to change his opinion with a view to conform to what was represented to him as being their decision, or was induced to decide differently on the same point of law on account of his ill-will or prejudice to Sampson Williams, one of the defendants as charged. for my own part, from a full consideration of all the evidence on this part of the charge. I am fully convinced that the defendant was alone governed in his decisions by a wish, and perhaps what he considered his duty, to conform to the decisions of the Supreme Court. I therefore find him not guilty as charged in the first specification of the third charge.

The second specification of the same charge, relates to partiality between counsel at the bar, and refers to certain transactions at the circuit court began and held in Franklin county, on the second Monday in January, 1829, and relates in part to the proceedings had at said court, on the trials, or disposing of two cases then pending in said court, one of which was Charles Neighbors vs. Henry Hereford, and the other the case of Nancy Brewer vs. Sherrod Williams; from the evidence in this part of the case I am unable to see in what partiality has been shown—it would in my opinion be a difficult matter to produce evidence going clearly to show partiality by a Judge in the disposing of causes tried before him, and would also be very difficult to satisfy a court of partiality for counsel on the trial of causes. Cases are frequently before the court in which there is great analogy as to the nature of the actions as well as points of law involved in their decision; still, one may have much greater claims to a

continuance, or may be urged for trial with far superior weight and force than the other—for instance, one may have been repeatedly continued by the same party, while his adversary's peculiar situation imperiously requires its decision; indeed, the peculiar situation of many cases in court might, in my opinion, be such as to justify, and indeed really require, a different disposition of suits in cases similar.

As to the partiality towards part of the bar, the evidence has not been sufficient to satisfy me, if it did exist with the defendant, that it has been used in the decisions referred to in the second specification of the third article, either, to the prejudice of the parties litigant in said Court, or to the injustice of the bar employed in either of the cases above referred to. I therefore acquit him on the second specification of the third charge.

As to the fourth, fifth, and sixth articles of impeachment, the proof is in my opinion conclusive, that the defendant took the privy examination of Mrs. Caroline P. Taul at Mr. James Campbell's house in the town of Winchester; it is also in proof that Mrs. Taul, did not appear in open Court; it is also in proof that the defendant did direct, or intimate to the clerk that he should not proceed to read the minutes, and by such direction did prevent him from reading said minutes relating to the deeds mentioned in said articles. From a full consideration of the whole evidence adduced both in support of the charges exhibited in articles, as well as on the part of the defendant, I am constrained to find him guilty on the 4th, 5th and 6th articles except such part of said articles as charges the defendant with corruption. The proof of the defendant's having previously been in the habit of taking privy examinations of feme coverts, and certifying them as

he has done in the case referred to in said articles, goes to satisfy my mind, that no fraud was intended by the defendant. But the circumstance of the defendant's certifying that the privy examination took place in open court, to my mind negatives the idea that he considered it legal to take the privy examination out of court.

In the argument of this case, several points have been urged for the consideration of the court, the most important of which is, that no Judge should be removed from office without positive, or at least strong presumptive proof, of corruption, and, that a Judge is to be presumed innocent until the contrary is made appear. The conduct of the defendant as relates to the deeds is entirely inexplicable, and though I cannot discern any thing like corruption in the defendant's conduct, I do consider that he acted both illegally and improperly in certifying when it was taken out of court, that the privy examination was taken in court, and also in certifying that Caroline P. Taul appeared in open court, when it is proven that she was not in court; also in preventing the minutes of the court from being read; and I can only account for it from the circumstance of the defendant's great, and I might add, misplaced confidence in Thomas P. Taul, which has been fully proven during the trial of this cause to have existed.

But it is urged that it is usual for the Judges to leave the making of the entries to counsel, and, that therefore, he is entirely excusable; but if such a rule of practice as that should prevail, the rights of the people instead of being placed in the hands of the high and responsible functionary, would be left in a great measure, to the control of irresponsible counsel, and would be done well or ill, properly or improperly, as those man-

aging the business might be well or ill disposed, or well or illy qualified to do business.

On motion of Mr. Gillespy, the court then adjourned until to-morrow morning 10 o'clock.

N. CANNON, President,

WILL. K. HILL, Cl'k.

WEDNESDAY, DECEMBER 23, 1829.

Court of impeachment met according to adjournment.

Mr. Cannon, the President thereof in the chair, the respective members of said court in their seats, except Mr. Walker, who was absent from indisposition; the managers on the part of the House of Representatives, and also the respondent and his counsel being present.

House of Representatives,

vs.

Nathaniel W. Williams,

Judge of the 3rd Judicial Circuit.

On motion of Mr. Huntsman, it was

Ordered, by the court, that no question submitted to the court, shall be argued by more than two on either side.

Mr. Brady, on the part of the managers, submitted the following in writing, to wit:

"The managers appointed by the House of Representatives, in the name of the good people of the State of Tennessee and of the House of Representatives, demand Judgment of the honorable Court, upon the 5th and 6th articles in the charges of impeachment and specifications against Nathaniel W. Williams, one of the Judges of the circuit courts of law and equity in and for the State of Tennessee and the third Judicial Circuit of said state.

The said managers demand that said Judge be removed from his office as such; and pray the judgment of the court.

The defendant, by his counsel, objected to the conviction and judgment demanded by the managers, because there were not fourteen votes against him, upon any one article.

And after much argument thereupon being had,

Mr. Huntsman submitted the following:

Are twelve affirmative votes a sufficient number (out of seventeen) to justify this court to pronounce the respondent guilty, under the provisions of the constitution of this state?

And the question thereon bein[illegible] taken,

It was determined in the negat[illegible]

AYES—8
NOES—9

Those who voted in the affirmative, are,

Mr. Frey, Gillespy, Greene, Holman, Love, Lytle, Tipton and Webster—8.

Those who voted in the negative, are,

Mr. Burford, Cannon, Cleveland, Graves, Huntsman, Johnson, Littlefield, McClellan, and Smith—9.

The question then recurred upon the proposition, and demand made by the managers on the part of the House of Representatives.

And the question thereon being submitted by the president,

Will the court remove the respondent from office?

It was determined as follows:

AYES—11
NOES— 6

Those who voted in the affirmative are,

Mr. Allen, Frey, Gillespy, Greene, Holman, Love, Lytle, McClellan, Smith, Tipton and Webster—11.

Those who voted in the negative are,

Mr. President, Burford, Cleveland, Huntsman, Johnson and Littlefield—6.

Ordered, that court adjourn until to-morrow morning ten o'clock.

N. CANNON, Pres't.

WILL. K. HILL, Clerk.

THURSDAY, DECEMBER 24th, 1829.

Court met according to adjournment.

Mr. Cannon, president thereof in the chair, and the respective members in their seats.

Mr. Webster moved the court to correct the Journal of yesterday, by striking therefrom that part purporting to be an order to dismiss the respondent without day; alleging said order to be incorrect.

And thereupon, the question was submitted by the president,

Shall said order be stricken from the Journals?

And determined in the affirmative.

AYES—10
NOES— 6

Those who voted in the affirmative, are,

Mr. Allen, Burford, Frey, Gillespy, Greene, Holman, Love, Lytle, Tipton and Webster—10.

Those who voted in the negative, are,

Mr. President, Cleveland, Huntsman, Johnson, Littlefield and McClellan—6.

Whereupon, it was ordered by the court,

That said order of yesterday be stricken from the Journal.

Mr. Tipton then moved the court to instruct the clerk to enter up a judgment of removal against the respondent, Nathaniel W. Williams, Judge of the 3d Judicial District.

Mr. Littlefield moved the court to adjourn until 2 o'clock P. M. this day.

And the question being taken,

Will the court adjourn until 2 o'clock?

It was determined in the affirmative.

AYES—13.
NOES— 4.

Those who voted in the affirmative, are,

Mr. Allen, Burford, Frey, Gillespy, Greene, Holman, Johnson, Littlefield, Love, McClellan, Smith, Tipton and Webster—13.

Those who voted in the negative, are,

Mr. President, Cleveland, Huntsman and Lytle—4.

Whereupon, it was ordered that the court adjourn until 2 o'clock this day.

TWO O'CLOCK, P. M.

Mr. Huntsman offered the following as his reasons for voting against the motion of Mr. Webster, to wit: "I think it is my duty as well as it is my privilege, sacred by the constitution, to give my reason why I voted against a proposition to correct the minutes of the court, in striking out the following words, to wit:"

"Whereupon, it was ordered by the court, that the respondent, Nathaniel W. Williams, be discharged, and that he be permitted to depart hence without day."

When the vote was taken by yeas and nays which immediately precedes the above order, and 11 voters in favor, and 6 against it, a motion was made to discharge the defendant. Mr. Greene of Roane, called for the ayes and nays; I observed that from the vote, (there not being two thirds of those who had voted, much less, were there two thirds of the whole house) it was not worth while to take the question. The ayes and

nays were not taken, and the vote was taken upon his discharge, and there being more ayes than noes, the chair pronounced the defendant discharged. It was so entered upon the docket; there was no decision asked for, nor any appeal taken from the decision of the chair, therefore there was nothing to correct. If the member from Bedford had moved a reconsideration of the question, and spread the whole on the Journal, then our proceedings would have appeared as it took place. But I conceive that in striking out that part of our records it is a suppression of what I know did take place. These are my reasons for voting agaist Mr. Webster's amendment.

A. HUNTSMAN.

Mr. Huntsman moved the court to adjourn until Monday next, 2 o'clock, P. M.

And the question thereon being taken,

Will the court adjourn until that time?

It was determined in the affirmative.

Ayes—Messrs. President, Allen, Burford, Frey, Gillespy, Greene Holman, Huntsman, Johnson, Love, Lytle, McClellan, Smith, Tipton and Webster—15.

Negatives—Messrs. Cleveland and Littlefield—2.

Whereupon, it was ordered that the court adjourn until Monday next, 2 o'clock, P. M.

N. CANNON, President.

WILL. K. HILL, Clerk.

MONDAY, DECEMBER 28, 1829.

Court of impeachment met according to adjournment,

Mr. Cannon president thereof in the chair, the respective members in their seats, except Mr.

Walker and Mr. Smith, the first being absent from indisposition.

On motion of Mr. Gillespy, it was

Ordered, that any member of this Court, wishing to enter his reasons upon the Journal of the Court, for any votes given by him upon the trial of the Respondent, Nathaniel W. Williams, be permitted to do so at any time after the adjournment of the Court, and previously to the adjournment of the Legislature.

On motion of Mr. Littlefield, it was

Ordered, that the proceedings of this day be signed, and that this court adjourn *sine die*.

NEWTON CANNON, President.

MR. GREEN'S REASONS.

Under the peculiar aspect, which the decision of the Court of Impeachment for the trial of N. W. Williams has recently assumed, I avail myself, as one of the members of that court of the privilege secured by the Constitution, to state the facts of the case and render my reasons.

After a patient hearing of the testimony in the case and the arguments of counsel as well on the part of the state as of the respondent, twelve of the court out of seventeen concurred in finding the respondent guilty on the charges and specifications set forth in the 5th and 6th articles of Impeachment, being two-thirds of the sitting members of the whole House, in their Judicial capacity. It was and is consequently my opinion that the Respondent was Constitutionally convicted on the said 5th and 6th articles and specifications. The decision of the court was however suspended for the purpose of advising and of hearing counsel on the question, whether two-thirds of the

sitting members were competent under the provisions of the Constitution to convict? When the arguments on the question were concluded, Mr. Huntsman submitted the proposition,

"Are twelve affirmative votes a sufficient number out of 17 to justify this court to pronounce the Respondent guilty under the provisions of the Constitution?

Which was determined in the negative.

AYES— 8.
NOES— 9;

Mr. Graves of Knox, who had not set on the whole of the trial appearing and voting in the negative. Not believing that this vote settled the Constitutional question from the circumstance, that one of the members present refused to vote, and one other Senator Mr. Walker, was absent, who was equally entitled with Mr. Graves to vote on this question.

Mr. Tipton then moved a re-consideration of the vote just taken, which was decided by the chair to be out of order, he, Mr. Tipton, having voted in the minority; Mr. Tipton then moved an adjournment until to-morrow 9 o'clock; which was seconded by Mr. Frey with a view to give Mr. Walker an opportunity of recording his vote on so important a question. The chair declined to propound the question on adjournment, and at this stage of the business, the managers on the part of the House of Representatives, demanded in writing that the Respondent be removed from office, and prayed judgment of the Court. And the question being propounded, it was determined in the affirmative, eleven voting for removal and six against it.

Mr. Burford, who had voted the Respondent guilty on the 5th and 6th articles of Impeachment now voting against his removal.

The Constitutional number of the Court hav-

ing convicted the Respondent, and as I believed, his removal from office seemed clearly a collateral question, on which a majority of the Court in my opinion were Constitutionally competent to pronounce Judgment for his removal from office.

Should this view be correct, it follows that even had not the vote been taken on Mr. Huntsman's proposition have been quite dubious and inconclusive on other grounds the vote taken immediately subsequent, of nearly two to one, and of a decided majority of the whole Senate for the removal of the Judge from office, most evidently must, in effect, have set aside and made void the vote on Mr. Huntsman's proposition.

Respondent's counsel now moved his discharge and that he go hence without day; and on the question being propounded I demanded the ayes and nayes. This call was repeated and pressed by me and objected to by Mr. Huntsman, because as he seemed to think, "It was not worth while to take the question." My own opinion however was quite different and the call for the ayes and noes was persisted in and continued until the decision of the chair was announced and the Court immediately adjourned, so that no appeal could then be made.

When the minutes of the court were read next morning, and before they were signed, from a conviction of duty, I renewed my call in writing for the ayes and noes on the question of discharging the Respondent, claiming it as an undoubted privilege and right to record my vote on this as well as all other questions. The motion was determined by the chair to be out of order, alleging that a motion to amend or correct the Journal would be in order. Perceiving it would arrive at the same object which I had in view, no appeal was made from the decision of the chair. When

Mr. Webster of Bedford, in accordance with the suggestion of the chair, moved the court to correct the Journal of yesterday by striking out therefrom, that part purporting to be an order to dismiss the Respondent without day, alleging said order to be incorrect, which motion was sustained, 10 voting in the affirmative and 6 in the negative. Thus giving a clear and manifest expression that the order for the discharge of the Respondent had not been concurred in by a majority of the Court. By the 5th rule for the government of the Court it is provided, "that no decision shall be announced unless concurred in by a majority of the Court." And the 6th rule further provides, that if it is desired by any member that the ayes and noes be taken on any question the clerk shall take the list around to the members for the purpose of giving their aye or noe, and the President shall announce the result. I here beg leave to state that it is due to the chair to say, that on this occasion, the President has publicly stated that the call for the ayes and noes was not heard by the chair.

As to the alleged intention on the part of the majority, or any of them, to suppress any part of the journals, it seemed not only disingenuous but absurd, as the above note for striking out, clearly demonstrates. For it must be admitted by all, that no order can be legitimate without a concurrence of a mojority of the court, and no such concurrence can be shown to have existed in the order for the discharge of the respondent.

J. I. Greene.

The foregoing was read in open court and permitted to be entered of record.

Wm. K. Hill, Clerk.

OPINION OF MR. GILLESPIE,
IN THE CASE OF JUDGE WILLIAMS.

The State of Tennessee
vs.
Nathaniel W. Williams, Judge, &c. } *Impeachm't.*

In determining upon the guilt or innocence of the defendant, upon the charges contained in the several specifications under the articles of impeachment preferred against him, I consider it proper and necessary, in the first place, to ascertain the character and nature of such offences in a Judge as are liable to impeachment, under the Constitution of this State. The 4th Sec. of the 4th Art. declares, that "the Governor and all civil officers under the State, shall be liable to impeachment for any *misdemeanor* in office."

The 2d Sec. of the 5th Art. declares that "the General Assembly shall by joint ballot of both Houses appoint Judges of the several Courts, &c. who shall hold their offices during *good behaviour*."

It has been argued by the defendant's counsel, that a Judge is not liable, under the 4th Sec. of the 4th Art. of the Constitution, to impeachment and removal from office, unless guilty of such an offence as would be a misdemeanor; and that the 2d Sec. of the 5th Art. which secures the tenure of their offices to Judges during good behaviour, requires such misbehaviour in office, as will constitute a misdemeanor, before they forfeit their offices. Thus far, I think the argument is correct; but I cannot agree with the learned counsel in the conclusion which they deduce from the argument, that misdemeanors are indictable offences at common law, and that, therefore, a Judge is not guilty of misdemeanor, for any deriliction of duty, unless he be guilty of such an offence as would be indictable at common law. Such a construction of the

constitution would lead to the most absurd consequences. A Judge might wantonly fail to attend some of his Courts for years together, yet he could not be indicted at the common law. He might from partiality to a favorite defendant on the docket, who was sued for a large amount of money, and wished to obtain time, fail or refuse, for years to try his cause; yet, he could not be indicted at the common law. He might act as Counsel for a party to a suit, which is considered highly criminal, Vide Hunt's case vol. 7 Dane's abr. p. 352, §6. He might, to save a friend under conviction for murder, or some capital felony, refuse to pronounce judgment against him. He might in his charges to the juries direct them what to find from the testimony, yet, for these and many other acts of misbehavior in office, that might be enumerated equally flagrant, he would not be subject to indictment at the common law, and therefore, according to the argument, he would not under our Constitution be liable to impeachment, and removal from office. Such a construction of the Constitution would be inconsistent with the nature and design of the organization of the judicial branch of our Government. Instead of being a forum in which justice would be administered impartially which was intended by its instition, it might be converted into a tribunal which could practise the most *palpable injustice* and become the common sewer of venality and corruption, and yet the Judges could not be reached and removed from office, because their crimes might be of such a character as would not subject them to indictment. When a Judge enters upon the discharge of the important functions of his office, he takes an oath, that he will, among other things, "administer justice without respect to persons, doing equal right to the poor and to the rich, and that he will faithfully discharge the duties

incumbent on him as Judge." Whenever a Judge is guilty of an act grossly inconsistent with the faithful discharge of his duty as a Judge, he violates his oath of office, and although in such case he would not be liable to indictment for perjury, yet, in a moral point of view—*in foro conscientiæ*, he would be guilty of that offence, and all the dreadful consequences of such a crime might flow in upon the community therefrom. Such misbehavior in a public functionary, I have no doubt, was designed by the framers of our Constiution to be regarded as a misdemeanor in office, for which a Judge should be removed. It is laid down in vol. 7 Dane's abr. p. 365, "that a misdemeanor in office, and misbehavour in office mean the same thing," that a man may so misdemean, or misbehave himself, as to be guilty of an indictable offence, and that he may so misdemean, or misbehave himself as not to be guilty of an indictable offence; yet, in both cases, be equally liable to impeachment and removal for misconduct in office.

From the construction I feel myself bound to give the Constitution, I consider any misbehaviour in a Judge grossly inconsistent with his oath of office, whether it constitute an offence indictable or not, such a misdemeanor under the constitution as amounts to a forfeiture of his office.

I shall now proceed to examine the charges specified and set forth in the articles of impeachment.

The first art. charges Judge Williams the respondent, with *capriciously*, *wilfully* and *unlawfully*, and *in violation* of his oath of office, failing and refusing to hold circuit courts, which it was his duty to hold; and the first specification of this article alleges such a failure in not holding the circuit court of Overton county on the 2d Monday of March 1824, to the great damage of

the parties, then and there attending, there being many causes for trial on both the civil and criminal docket.

The defendant in his answer admits that he failed to hold the court, but justifies or excuses himself on account of Providential causes—the falling of rains, and high waters: and pleads not guilty of any high crime, or misdemeanor.

The testimony both for and against the defendant is substantially the same upon this charge.

It is proved, that the defendant, with others, members of the bar, set out from Sparta for Monroe, and arrived at White Plains, where they lodged on Saturday night, immediately preceding the Monday on which Overton court should have been held. That the White Plains was within twenty-five miles of Overton court house. The Judge having travelled more than half the distance to this court, I am bound to believe, it was with the honest intention of proceeding on and opening the court in due time; but in consequence of the rains, that had fallen, and were falling next morning, as it is proved, and the great probability, that the creeks on the road between the White Plains and Overton court house would be impassible, the defendant, at the suggestion of some of the company, concluded to go home, a distance of 25 miles, having been some time absent from his family, but with an understanding, that, he should come to Monroe on Wednesday evening following, (that day being then thought to be as early as the creeks on the road could be safely forded,) for the purpose of opening court next morning, and of this intention he requested witness M'Cormack, who was determined to travel on at all hazards, to inform the clerk of Overton circuit court:

When the defendant returned home he found his little daughter sick, who had been very low. From this cause, together with a continuation of the rains, and high waters, and the delicate health, which defendant is proved to have had, he failed to come to Monroe according to appointment, and open court on Thursday, and did not hold that term. Although it is proved, that the defendant might have arrived safely at Monroe by travelling the same road that Messrs. Haggard and Ames went, or by having waited one day, and gone with Col. M'Iver and Col. Rogers, yet as the route travelled by Messrs. Haggard and Ames was through the mountains, not much travelled, and most probably unknown to the Judge, and as it appears it was the design of the defendant, when he set out for his residence on Sunday to come to Overton court as far as it was then believed, the waters could be crossed, and was prevented by a continuation of high waters and the sickness of his daughter, I consider in this case that the defendant's dereliction of duty in not holding Overton Circuit Court in March 1824, was not so great as to authorize his removal from office. I shall therefore vote upon this charge, not guilty.

The second art. of impeachment, I understand is abandoned by the managers.

The third art. of impeachment charges defendant with indulging undue prejudice against parties to causes tried before him, and against attornies, who practise as such in the courts of his circuit, against their clients and client's causes, and with *unlawfully ordering* and *adjudging* in causes in his circuit, and with *partiality* to persons, unmindful of his obligations as Judge &c. The first specification, of this art. alleges, that at a circuit court in the County of Smith, in April 1825, in the case of Henderson's lessee vs.

Sampson Williams *et al*, the defendant from *ill will* and *prejudice* against Sampson Williams the defendant in said suit, decided that the statute of limitations would not bar an entry, and that defendant subsequently, at July term 1825, of Franklin circuit court, in the case of Ross' lessee vs. May, decided, that the statute of limitations would bar an entry.

Defendant in his answer states, that in the investigation of this question in the trial of Williams' case, something was said about the Supreme Court at Columbia having decided, that the statute would run against an entry, that it was said in reply, no such decision had been made, but that the case was then under advisement of the Supreme Court in the case of Hickman's lessee vs. Gaither *et al* in Nashville. That defendant under this state of things decided according to what he believed and understood to be the decisions of N. C. and Tennessee for the last twenty years past upon this subject. That defendant decided the case of Ross' lessee vs. May at Franklin in July 1825, upon the authority of the decision upon the same point at Columbia in Holland vs. Wright, the truth of which was vouched for by the Hon. Jacob C. Isacks; and that he felt bound to conform his decisions to the principles settled by the supreme revising tribunals of the country, and says he is not guilty &c.

It is proved that at July term of Franklin circuit court 1824, by the testimony of Judge Green and Mr. Campbell, defendant decided that the statute of limitations would run against an entry, and at July term of the same court 1825 decided the same question upon the same case in the same way. That intervening these decisions was the decision of the same question in the case of Henderson's lessee vs. Williams *et al.* complained of, in which defendant determined, and so charged

the Jury, that the statute of limitations would not run against an entry.

There is a great apparent contrariety and inconsistency in these decisions, and the argument of corruption deduced from the hostility that is proved to have existed between defendant and Sampson Williams at the time Williams' cause was tried, and defendant deciding a question of law in his case differently from his decisions upon the same question upon another cause both before and after the trial of Williams' case, has been urged with great plausibility, and some degree of propriety. In July term 182½, at Franklin when the first decision in proof in the case of Ross' lessee, vs. May was made, it appears from the testimony, that it was upon the trial pretty generally conceded by the bar, that the question had been settled by the Supreme Court at Columbia, that the statute of limitations would run against an entry; and that Judge Green the counsel, who advocated the other side of the question, although he did not entirely yield the point, yet it would appear, that he gave into the same opinion.—Under these circumstances it was to be expected, that the defendant should have decided, as he did; particularly upon a question, about which there had previously been such a contrariety of opinion amongst the ablest of the profession. When the case of Sampson Williams was subsequently tried in April following, it appears. that the question was bandied by able counsel on both sides; that the authority of the decision in Holland vs. Wright was roundly denied: and it was boldly asserted that no such decision had been made; but that the question was then under advisement in the case of Hickman's lessee vs. Gaither at Nashville. The defendant having decided in July 24, in the case of Ross' lessee vs. May upon the authority of the supposed decision of the Supreme

court in Holland, vs. Wright at Columbia; but being now satisfied by the representations of the counsel, who argued the case of Henderson vs. Williams, that the question was still unsettled, and undecided, and under advisement of the Supreme court, he was left entirely upon his own resources, as the authority upon which his former decision had been made was now swept from under him—under these circumstances, I consider him free and untrammelled by any decision whatever, to form an opinion for himself, and to decide according to his best judgment of the law. It is said he should have decided in this case of his enemy, as he had done in the case of Ross' lessee vs. May, when he felt indifferent to the parties; but as it is proved that, the decision in that case was predicated upon the authority of the supposed decision of the Supreme court, which he was now warranted in believing had not been made, I dont consider, that he should feel himself bound by it. It is also proved by Mr. Oliver B. Hays, who was counsel for the defendant, in this case, that although he believed the decision wrong, yet it never entered his head, that the Judge was corrupt in making it.

In the decision subsequently made by defendant in Ross' lessee vs May, at Franklin circuit court in July 1825, it is proved, that it was again roundly asserted, and generally assented to by the members of the bar present, that the question had certainly been settled by the Supreme court, in Holland vs. Wright, and that the Hon. Jacob C. Isacks as well as Messrs. Campbell and others, vouched for the truth of the decision as reported. It is also in proof from Judge Green, that he felt satisfied for a short time, that the question was settled. Thus situated, the counsel on both sides yielding the point that the question was settled, we cannot suppose, that the defendant, possessing,

as it is in proof, constitutionally, so much credulity, could under these circumstances do otherwise, than yield to the general impression, and decide as he did: and in his whole conduct in these decisions, I can see nothing so irreconcilable with an honest desire on the part of the defendant to make his decisions in accordance with the decisions of the Supreme court, as to warrant me in finding him guilty of corruption.

I therefore on this specification vote, not guilty.

The second specification of this article, charges defendant when sitting on the bench, with being influenced by an inordinate partiality for Micah Taul, an attorney at the bar, and of hostility to Hopkins L. Turney, another attorney at the bar, in refusing Mr. Turney's request who was counsel for the plaintiff in the case of Neighbors vs. Hereford, to pass over the case for the present, when it was reached on the docket, and subjecting him to a non-suit—and in the case of Brewer vs. Williams, in granting the requst of Micah Taul, who was counsel for the plaintiff, and who assigned the same reason for passing over the case, that had been assigned by Turney; and in threatening the opposite attorney if he did not agree, he would adjourn the court, till morning, and by that means enforce it; and did adjourn the court, &c.

It is in proof, that it is generally believed, that there is a warm personal friendship between Judge Williams and Micah Taul, and if there were no other evidence, what has passed in the presence of the court, is sufficient to establish that fact, but in this, there is no wrong, at least judicial wrong. Every man has a right to select his own friends, to indulge his partiality towards them, and to treat them in his own way, provided in so doing he does not prejudice the rights or

interests of others; but it is charged, that the defendant carries with him his partialities into the courts of justice; and permits them to influence his decisions from the bench, and particularly towards Micah Taul. Mr. Campbell proved, that it was the general opinion in Franklin county, that Micah Taul has the ear of the court, and an undue influence over their Judge. It is also proved that in the case of Neighbors against Hereford, the defendant refused Mr. Turney, the counsel for the plaintiff, to pass over for the present the cause, when reached upon the docket, but compelled him to suffer a non-suit; that defendant, and Turney were not at a good understanding, and that Taul was the counsel for the defendant Hereford. It is further proved by Mr. Goodwin and Mr. Rains, that when the case of Brewer vs. Williams was called on the docket on the same day, that Micah Taul moved the court to pass the case over for the present; Mr. Rains, who was counsel for the defendant, at the instance of Turney, who was also counsel for the defendant, objected: the Judge said, that unless they agreed to pass the cause, he would adjourn the court till next morning; when an altercation took place between the Judge and Turney on account of the Judge refusing to treat this case, as he had the case of Neighbors vs. Hereford; and defendant adjourned the court. It is alleged as an excuse for adjourning the court, that Turney had insulted the Judge, and that he adjourned to avoid being under the necessity of ordering him to jail.—The reason offered, instead of diminishing, increases the suspicion in my mind, that all might not have been right in this transaction: and the very circumstance of failing to discharge his duty with promptness and decision, by instantly ordering Mr, Turney to jail, leaves a strong rooted impression that the Judge might have been

conscious that his own conduct in this case would not justify such an extraordinary measure in relation to Turney; but as motions for passing and continuing causes, are made to the sound discretion of the court, and depend so much upon the practice of each court, and upon the peculiar circumstances surrounding each case, and as the case in question was one in which a woman was a party, and as the courts generally, so far as I am personally acquainted with their practice, are more indulgent in a case, when a female is concerned—I am not prepared to say, in justice to myself, that the defendant is guilty of corruption in this matter. I shall therefore upon this specification, vote not guilty

The 4th, 5th and 6th articles of impeachment contain constituent parts of the same charge, relate to the same subject matter, and have been considered of, and treated as an entire charge by the managers on the part of the State, as well as the defendant's counsel in the argument of the case before the court. The first of these articles charges, that a paper or writing purporting to be a deed from T. P. Taul and Caroline P. Taul, his wife, for a part of a lot of land in Nashville, (which land was in right of his wife) to Benjamin Deckerd, and purporting to be signed and sealed by Taul and wife, was by said Taul, on the 23d day of July, 1828. in the Franklin Circuit Court, defendant there presiding, produced and acknowledged before said court, but in a manner to be known by the Judge and as few others as possible; and that the Judge *falsely, unlawfully and corruptly*, made a certificate upon the back of said writing, and signed and sealed the same, alleging that the writing purportiug to be a deed, was on the 23d day of July 1828, signed, sealed, delivered and duly acknowledged in open Court by the said Thomas P. Taul and wife, to be their

deed for the purposes therein named—the said Caroline being privily examined by him, separate and apart from her husband, and admitted to record and ordered to be certified for registration; that the said Judge then and there presiding, *wilfully, corruptly, falsely and unlawfully*, did cause to be entered as a minute or record of said Court, in the record book, an entry set out, alleging in substance, that a deed of conveyance from Taul and wife to Deckerd, for the part of a lot in Nashville, was signed, sealed, delivered and duly acknowledged in open Court by said Taul and wife to be their deed, and that said Caroline had been privily examined by the Court, separate and apart from her husband, and that the minute or record of said Court, as well as the certificate upon the back of said deed are both false—in this, that the deed was not on the day alleged, nor at any other time in open Court, signed, sealed and delivered, or duly acknowldged by the said Caroline, for the purposes therein named—and that the said Caroline had not been privily examined by the Court separate and apart from her husband, and that she did not declare to the Court, upon a privy examination, or in any way, that she executed the deed of her own free will and accord—that she was not present in Court on that day, nor in any manner attended the Court at any time during the said term thereof—and that said Judge then and there presiding, did *wilfully, corruptly and unlawfully* prevent the said minute or entry upon the record, from being read in open Court, at any time after the same was placed upon the record, and did adjourn the Court for that term without having the same read in open Court contrary to his duty as prescribed by act of Assembly, all which, it is alleged said Judge did with intent *wilfully, corruptly and unlawfully* to injure, wrong and defraud the said Caroline

and her heirs at law, from undue partiality to the said Thomas P. Taul &c., by means of which the said Caroline and her heirs were *corruptly* and *fraudulently*, according to the *forms* of law, divested of the legal title to said lot and piece of ground, and the same in legal form vested in the said Thomas P. Taul and his heirs at law.

The 5th and 6th articles are composed entirely of separate parts or parcels of the charge contained in the fourth article, except that neither of them directly charged defendant with corruption.

The defendant in his answer alleges, that he took the privy examination of Caroline P. Taul at the house of James Campbell, at the distance of one hundred yards from the Court House, at the desire of Campbell and T. P. Taul—that he went from the bench in company with T. P Taul to Campbell's house—upon his arrival there, he was seated some time, and then conducted to the room of Mrs. Taul, where he took her privy examination separate and apart from her husband &c. Immediately thereafter he returned into the Court House, and proceeded with the business of the Court trusting the certificate and orders necessary to give legal effect to the same, to the preparation of the parties interested in said instrument &c.—alleges, that by the laws of the land he was authorized to take the examination of a feme covert, as he did in this instance—that he had uniformly done so prior to that time—that he had no recollection of the orders in relation to the deed being passed over, without being publicly read in court—and insists that the act of Assembly requiring it to be done, is only directory, &c. and that the act of Assembly means that the Court shall be satisfied, that the entries are correctly made.

In the first place it is insisted on the part of the defendant's counsel, that the privy examination of Mrs. Taul is strictly legal—that this mode of passing the lands of femes covert was substituted in this country under the act 1715, in lieu of the mode of fine and recovery in England, and that the acts of '51, 1st Scott 82, does not repeal the act of 1715, 1st Scott 16, because they are both affirmative in their provisions, and the former only cumulative containing no repealing clause.—That the act of '13 is not inconsistent in its provisions with either the act of 1751 or the act of 1715, and that it contains no repealing clause, and that therefore the acts of 1751 and 1715, are both in full force, as well as the act of 1813. In support of this construction of the statute, 6 Bacon 373 and 377 was referred to. It is argued that the act of 1715 gave authority to the chief Justice of the precinct to take the examinations of *femes covert* out of Court. That the act of 1751 only enlarged the powers of the Court by authorizing the taking of privy examinations of distant, or aged and infirm *femes covert*, under a commission awarded from the Court for that purpose to two commissioners. That the act of 1777 chap. —— gave the Judges of the Supreme court, all the power and authority, that any of the Judges in the State had prior to that time; and that the act of 1809, 1st Scott 1150, gave the Judges of the circuit court all the powers and authority that the Judges of the superior courts had previously possessed. All this being admitted to its fullest extent, I don't think it establishes the legality of the mode of taking the privy examination complained of in the 4th, 5th and 6th articles of Impeachment. For the purpose of correctly understanding this matter, it will be necessary briefly to advert to the practice in England, under the statute of fines and recoveries.

When lands in England are alienated by fine, or by fine and recovery, being a real or fictitious action of record, leave is granted by the *Court of the county* in which the land intended to be passed *is situated* to the parties to compromise the suit, which results in an agreement on the part of the defendant or defendants, that the lands are the property of complainant, and this acknowledgment must be made in the Court of Common Pleas, or before the Lord Chief Justice of that Court, or before one of the Judges of that Court, or before two or more Commissioners of the county empowered by special authority by a writ of *dedimus potestatem* issued out of said Court, and if there be a *feme covert* among the *cognizors* as they are called, she is privily examined separate and apart from her husband, &c. by the court, the Judges, or the Commissioners thus appointed: 2 Black, Com. 349, 350.

Under the English practice it will be found, that the acknowldgments, and privy examinations of *femes covert* in levying fines, and suffering common recoveries were taken by either the Court, the Judge, or Chief Justice of the court, or two or more commissioners specially appointed by the *Court of the county in which the land to be transferred is situated.*

It may not be improper here to remark, that, in order to render the fine more universally *public* and less liable to *fraud* or *covin*, all the proceedings on fines, either at the time of acknowledgment, or previous, or subsequent thereto, are by the English statutes, after engrossment, required to be read and proclaimed in court (during which all pleas shall cease) sixteen several times —four times, at the four succeeding terms, vol. 2, Black Com. p. 351.

Such was the caution and such the *publicity* required to prevent *fraud* and *covin* in the transfer

of real estate, by that country, from which we have borrowed most of our laws as well as the practice under them in relation to the alienation of real estate. The act of 1715 being a substitute for the mode of passing the lands of femes covert in England by fine, or fine and recovery, gave the Chief Justice the power of taking the privy examinations of *femes covert* out of court in relation to the execution of deeds of conveyance of their lands, but still retained so much of the English law as to limit such examinations to the *county where the lands to be conveyed were situated.*

The act of '51 enlarges the power of the Chief Justice possessed under the act of 1715, as well as the powers of the Court of the precinct, by authorizing them to order the Clerk of the Court of the *county where the land lies* to issue a commission to two or more commissioners to take the privy examinations of distant or aged *femes covert.*

In neither of these acts is the power or authority of taking the examinations of femes covert given to the Court or Chief Justice, except of the county, where the land lies. Nor, is there any authority either by the common, or statute law of England, or the laws of North Carolina up to this time to take such examinations out of the County, where the land lies, otherwise than by commissioners specially appointed and commissioned, as in England by a writ of *dedimus potestatem*, for that purpose.—Admitting that the act of 1777, chap. —— gave to the Judges of the Superior court all the powers, rights, and authority enjoyed, and exercised by the Chief Justice of the precinct court; still they would not have the power *virtute officii* under the act of Assembly, nor at common law, to take such examinations out of the *county where the land lies*, nor

can the Circuit Judges derive such an authority under the act of 1809 1st Scott p. 1150, which it is not pretended, gave any greater powers and authority to the Judges of the Circuit courts, than the Judges of the Superior courts previously possessed and enjoyed—we are then left to determine, whether this power is given by the act of 1813, 2d Scott p, 146. This act makes an important alteration in the laws theretofore existing, prescribing the manner of passing the lands of *femes covert*. By this act, authority is given to *any* court of record in this, or any other State, to take the examination of femes covert in open court, or to appoint and commission two commissioners to do the same. But here no authority is given to any Judge, or Justice *virtute officii* to take such examination out of court, beyond the limits of the county where the land is situated. But it is insisted, that the town of Winchester, was the *verge* of the court, and that the Judge any where within the limits of the town may be considered a court.

The act of 1813, 1st Scott p. 1150, requires these privy examinations, or the commissions to be awarded for that purpose, to be done in a court of record.

A court of record has a technical and precise meaning well defined and long understood. "It is a place where justice is judicially administered," &c. its concomitants are a Judge or Judges, a Sheriff or Marshal, a Clerk, and records. Separate these and it would cease to be a court of record as defined by Blackstone in his Com. and therfore this act of Judge Williams, at the house of Mr. Campbell, upwards of 100 yards from the court house separate and apart from the constituents of a court of record, cannot be considered as done in court. It is further argued, that the Judge could act as a commissioner himself—

of this I have no doubt, but not in virtue of his office of Judge, but by virtue of an appointment *by* and a commission issuing *from* a court of *Record;* the act of 1813 requires the appointment, not of one, but of two commissioners to perform this service.—But no appointment appears to have been made and entered of record in this case; I am therefore irresistibly led to the conclusion, that the act of the defendant in taking the privy examination of Caroline P. Taul out of court in the county of Franklin in relation to the execution of a deed for the conveyance of land in the County of Davidson is clearly illegal.

It is alleged in the charge we now have under consideration, that the privy examination of Mrs. Taul in relation to the execution of the deed to Deckerd, never was taken by the court, and the proof of the witnesses, who testified as to this point is very clear and uncontradicted, that she had not been in court during that term, but that she was confined to her sick room at the house of James Campbell, some distance from the court house—nor does the defendant pretend in his answer, that the examination of Mrs. Taul was taken by him in open court, but this part of the charge he avoids by saying, that he took her privy examination separate and apart from her husband at the house of James Campbell, and at his procurement and request. The testimony of Mr. Campbell upon this point is clear and explicit, that the privy examination of Mrs Taul in relation to the execution of the Deckerd deed, was not only made, if made at all, by the defendant without his consent or procurement, but that he had no knowledge of the existence of such a deed until after the adjournment of the Court. This allegation in the answer in the important connection in which it is used being thus flatly

contradicted by the proof of Mr. Campbell himself, is sufficient to put the mind upon its guard, and make it more astute in the enquiry—was the privy examination of Caroline P. Taul, in relation to the Deckerd deed taken at all? It is proved not to have been taken in court. The defendant alleges, it was taken at a private house; it certainly devolved upon him, if he designed to justify under this mode of taking the examination, to introduce some proof to establish the fact. But, for the truth of this fact, we have nothing but the unsupported, isolated assertion of the defendant himself, with his other assertion immediately connected with the same, most flatly contradicted by positive proof.

No witness has said that he was present and heard any such examination. Nor has any of the witnesses, when testifying in relation to their conversations with Mrs. Taul, proved that in any of these conversations, she acknowledged, or said that the Judge had taken her examination and acknowledgment as to the execution of the deed in question. The only circumstantial evidence before the court, in reference to this point, is rather against that for the defendant. Mrs. Campbell proves, that the defendant and Thomas P. Taul came together to the house of Mr. Campbell, that she did not conduct the Judge to the room of Mrs. Taul, as alleged in defendant's answer, for she had shortly before been ordered from her sister's room by Thomas P. Taul—that the Judge and Thomas P. Taul, went into the room of her sister together, retired from the house together, that she heard none of the conversation that passed in her sister's room—heard no mention made of the deeds at that time. Thus, leaving it extremely probable, that if the privy examination of Mrs. Taul was taken at all, that her husband was present all the while. Next, is the endorsement

upon the deed, certifying the examination to have been taken in open court, which is falsified by the testimony. If such an examination were made out of court, and the defendant were to be excused, or the position assumed by his counsel, that he so took it, from an honest conviction of the legality of the proceedings, I see no excuse that has been, or that can be made by the defendant, for his certifying to facts upon the deed, which were not true, and for his causing to be entered upon the record, a statement of facts, which never did exist, to wit: that Caroline P. Taul was privily examined &c. in open court, when the proof makes out, that no such examination was made. The next point in the case to be considered, is the suppression of the reading of that part of the record containing the entry above alluded to, thus falsely made, and that in express disregard and violation of the directions of the act of 1809, (vol. 1st Scott, p. 1154, sec. 20.) and the conduct of the court immediately connected with the suppression of the reading of this record, is but too well calculated to produce the most gloomy suspicions of the motives that influenced it. The defendant is presiding in court—the clerk, in discharge of his duty, is reading the record of the proceedings of the previous day. Defendant's particular friend, T. P. Taul, is standing looking over the shoulder of the clerk. The Judge, we are to presume, is attentive to what is transpiring—in reading the record, the clerk reaches the entry in relation to the deed in question. Taul puts his hand upon the shoulder of the clerk and stops him;—the clerk persists, and insists that it is his duty to read the record, and is about to commence doing so; Taul then turns round, and addressing himself to the court, states—that the court is in possession of the matter, and he presumes it is not necessary to read it, that it is a *private* matter, concerning his

own family, and does not wish it made public—the Judge bows assent, and orders the clerk to pass over that part of the record. Such is substantially, if not literally, the testimony of Peter S. Decker. John Hanly, and others.

The defendant knew the solemnities necessary to pass real estate in the condition of the land in question. That so far from it being permitted by law; to be done privately, such conveyances, as well as the examinations incident and necessary thereto, are required to be noticed upon the public records of the courts of justice of the country. That these records are, by the laws of the land, designed to contain *public*, *not private* entries. That the acts of the court are to be done *publicly*, not *privately*. All these being known to the defendant; and knowing also, that *publicity* in the conveyance and transfer of landed property, whether at the common law, the statute laws of England, or of our State, has always been deemed of the last importance. When Thomas P. Taul proposed the passing the record in relation to the deed in question over without reading it, he certainly should not have hesitated in spurning the suggestion; and instead of yielding an easy assent to the request of his friend, in violation of an express statute—instead of being influenced by reasons of secrecy, so incompatible with the high character of his office—and instead of lending himself as an instrument in the perpetration of a most consummate fraud, which, I believe, was designed by his friend Taul, to be practised in this matter—he should have stood aloof, and boldly have discharged his duty, by ordering the whole of the record to be read, even should it have been the means of disclosing the secret of his friend. But it is insisted by the defendant's counsel, that there was no fraud; none designed; nor could any be committed upon Mrs. Campbell in

this transaction; that she could not be the subject of fraud; that she had no interest whatever in the lot conveyed—her sister not having received it from their common ancestor, but from a collateral relation, had a right to dispose of the property as she might think proper. That she loved her husband most tenderly—that he was in delicate health—that she was desirous of making an ample and comfortable provision for him—that she knew the contents of the deed, and was satisfied with them—and that therefore the probate or acknowledgment of the deed concerned no body except Taul and wife.

It is proved by the testimony, that Mrs. Taul had lived at the house of Mr. Campbell, with her sister, for years before her marriage—that she was then, and had for some time past been living with her sister—was then sick at her sister's house, where she shortly afterwards died—that Mrs. Campbell was her only sister of the whole blood, and to whom she was very much attached—that her husband was in a very low state of health, from a pulmonary complaint that was preying upon his constitution, and from all reasonable calculations could not live long. It is also proved that Mrs. Taul, although desirous of making ample provision for her husband, was still desirous, upon his death, of securing the descent of the property to her sister and her heirs. Such a wish and intention on the part of Mrs. Taul, are clearly proved by the concurring testimony of all the witnesses who conversed with her on the subject, and nothing could have been more reasonable, from the kindness and hospitality it is proved she had so long received, and was then receiving at the hands of her sister. It is further proved, that she was particularly desirous, that the property should not fall into the hands of the Taul family, after the death of her husband.

Such a declaration, as well as I recollect, was made by Mrs. Taul, to all the witnesses who had conversed with her on the subject. But it is further proved, that about the time the deed in question was executed by Mrs. Taul, that her husband executed a will devising the property thus conveyed to Mrs. Campbell and her heirs, alleging that this would secure the descent of the property as Mrs. Taul wished—that this agreement on the part of the husband, thus to devise, formed a part of the contract, and of the consideration which influenced the wife, on her part, to execute the deed in question. But I feel well convinced, from the secrecy with which T. P. Taul appeared disposed to conduct, and did conduct this matter, together with various other circumstances attending the transaction, that it was not the design of T. P. Taul, ultimately to make the devise he then pretended in the writing he had drawn up.—But upon this trial, it has not only been admitted, but insisted upon by the counsel for the defendant, that Taul was bound by this *will*, as forming a part of the consideration of the contract between him and his wife, when she executed the deed, and that he had not the power afterwards to revoke it, and that a court of equity would decree a specific execution of the devise. With all these facts, the defendant, if he took the privy examination of Mrs. Taul, must have been acquainted. Under this aspect of the case, it cannot be insisted that Mr. Campbell, in right of his wife, had not an interest in any transfer of the property that was, or could be made. It has been insisted by defendant's counsel, that the defendant knew the delicate relation that subsisted between Mrs. Taul and her husband, in whose integrity she had the most unbounded confidence, and for whom she wished to make a generous and liberal provision on the one hand, and her sister, who had

expectations on the other; and that for the purpose of avoiding an excitement and disturbance, which the publicity of this transaction might produce in the family, and the distress it might occasion to Mrs. Taul, who was then upon her bed of languishment, he acted prudently and correctly in not requiring the record to be publicly read. A *Judge* has no right to know *privately and extra-judicially*, what are the feelings, expectations and interests of any individual or individuals who may come before him, much less to act officially upon such information, but should be influenced in his official conduct by the facts that may be, not *privately* and *clandestinely* but *publicly* disclosed to him, in his official character, according to the rules prescribed by the laws of his country.—When I see this friend and associate of the defendant, who is proved to have had the *ear* of the *Court*, making a *private* arrangement in *public* form, for his own personal benefit, by which he is to realize an estate worth some ten or fifteen thousand dollars—when it is further considered, that this estate was to be secured by an entry upon the record, made first to speak what was false, and the reading thereof afterwards suppressed—when I see all this done by the defendant, or under his sanction and order—when I see so many acts of the Judge, in one transaction, as I consider them, clearly illegal—so many irregularities in relation to one subject-matter, and so many facts in relation to this Deckerd deed, made to appear upon the records of the court in which he presided, so grossly inconsistent with the truth of the case—it leads my mind reluctantly to the conclusion, that they could not have existed consistently with the innocence of the defendant.

It has been argued by defendant's counsel, that the act of 1809, 1st Scott 115½, sec. 20, is only directory to the courts; and the Judge could obey

it or not, as he might think proper. I entertain no doubt but this statute is merely directory. But to say that a Judge has an arbitrary discretion to obey it or not, as he may think proper, without having a legal or reasonable excuse, would be fraught with the most dangerous consequences. So important, in England, is deemed the reading of the records in relation to such conveyances as the one in question, that such records are required, as I had occasion before to remark, to be read, not once, but sixteen several times, to prevent *fraud* and *covin*. What is done in court, is supposed from the nature of that branch of our government, to be done before the public. The public have a right to witness it—and for the same reasons, have the right to hear the records read, that they may know whether all things that transpired in court, have been correctly entered of record. I therefore, feel well satisfied, that some better reason than that offered by the defendant in this case should be given, before a court could be justified or excused for not obeying the directions of a statute. When a Judge fails to comply with, or disobeys the directions of a statute *wilfully*, and without *legal* excuse, as in the present case, I consider him guilty of a great derilietion of duty. It has been argued, that this examination at the house of Mr. Campbell, was made at his suggestion; and that being an eminent lawyer, his opinions were entitled to much weight with the Judge, and that this court should not hastily condemn the defendant, when so respectable an authority was suggesting and recommending the course pursued;—such is not the testimony: Mr. Campbell proved, that he did not believe this mode of examination legal, but that he suggested to Taul the propriety of adjourning the court to his house, under an act of Assembly authorizing the court to adjourn to any house in town, and told Taul he

would get the court to make such an adjournment; but was answered by Taul, that he need not mind it, alleging that his wife had some objections to signing the deed to Porter, and requested Campbell to talk with her on the subject, which he promsed to do—never having dreamed of the deed to Deckerd—the object of which, from the proof, was, on the part of Taul, to divest the title out of his wife, for part of a lot in Nashville, which he possessed in her right, and to receive a re-conveyance from Deckerd, by which, upon the death of Taul, the property would, by the law of descents, be cast upon Taul and his heirs, instead of her heirs, as would have been the case without such an arrangement.

It has been argued by defendant's counsel, that the high and important character of the trust committed by his country to his charge, and in the performance of which, he had been so long employed, uncensured and unsuspected; that the unbounded confidence which many of the most distinguished men in the State have, so much to my satisfaction, as one of the members of this court, proved, that they have long reposed in the honesty and integrity of the defendant, ought to weigh much with the court in forming an opinion, by which he is to be hurled from his office, and from public confidence; by which his peace of mind is to be destroyed, and infamy and disgrace entailed upon him and his family, or by which he is to be restored to public confidence, to return uninjured in character to his family and friends, and again enjoy peace and tranquility of mind.—This argument I think, is correct, and I have given it all the weight to which I could believe it entitled in the examination of this case, and the good character, which the defendant has proved upon the trial, has had no small influence on my mind, in the vote which I gave upon the 2d speci-

fication of the 2d article of Impeachment; but when I have such an array of testimony before me, such a developement of facts, all concurring to prove a prostitution of official authority, in carrying into accomplishment, designs so dark, so secret, so deceptive and so base, as it is clearly proved to my mind T. P. Taul had in this matter, I feel constrained, although with much regret, to find the defendant guilty upon each of the 4th, 5th and 6th articles of impeachment.

OPINION OF MR. ALLEN,

On the Constitutional question that arose during the trial of the Hon. N. W. Williams.

At the time it became material for the Senate, sitting as a court of Impeachment, to decide the Constitutional question that arose during the trial of the Hon. N. W. Williams, I declined giving an opinion. Previous to this time, I had not at any period of my life, bestowed a moment's consideration upon the question; and at the time the other members of the court delivered their opinions, I had not given the subject that consideration which I thought due to so important a question, and consequently had not formed an opinion.

This question is veiled in such obscurity as to cause a difference of opinion even among gentlemen of the highest legal attainments, after giving it the most patient consideration. It is not therefore strange that a difference of opinion should exist among the members of this court. Since the question arose in this cause, my attention has been directed to it, and I have settled down upon a principle something different from that expressed by any member of the court, or that contend-

ed for by the counsel for the State, or the Respondent. Nine members of the court have given it as their opinion, that two thirds of the whole number of the Senators elected by the people, must concur in the opinion of guilty, in order to convict. Eight members of the court have given it as their opinion that the Constitutional number required to convict, is two thirds of the members that sat upon the cause, and gave their opinion. I differ with them all in this, that I believe two thirds of the number sworn to try the cause, is the Constitutional number required to convict. The Constitution provides that the Senate may be organized for different purposes. It may be organized as a Legislative Assembly, or as a court of Impeachment. The whole Senate would be competent to sit in its Legislative capacity, but a case might arise, where the very moment the Senate assumed a different character, to wit, that of a court, several of the members would be incompetent to sit, and would of necessity have to be withdrawn, and therefore would constitute no part of the House organized for this particular purpose.

In the case of Judge Williams, Mr. Campbell was excused from sitting as one of the court on account of his interest in some question to be determined by the court; and although he is one of the Senators elected by the people, and is one of the House while sitting in its Legislative character, it will surely not be insisted that he formed any part of the House organized for the trial of Judge Williams.

The second section of the fourth article of the Constitution, is in these words: "All impeachments shall be tried by the Senate. When sitting for that purpose, the Senators shall be upon oath or affirmation." Directly following, is the clause upon which I am now to place a construction,

which is in these words: "No person shall be convicted without the concurrence of two-thirds of the whole House."—By taking these two sections of the Constitution together, it is plain to me that the word House, as here used, has reference to the number sworn to try the cause. The word House is used to express different things. One meaning given to it by Webster's dictionary, is this: "The quorum of a legislative body"—"The number of Representatives assembled who are constitutionally empowered to enact laws." Hence we say there is a sufficient number of Representatives to form a House. This book, I am willing to receive as authority, notwithstanding the very ingenious reason of an honorable member of this court, which was, "That the definition given by Webster's Dictionary of any word used in the Constitution, should not be received as authority, for the reason that the Constitution was written and published long before the Dictionary." —This may be a sufficient reason, but with all deference to the opinion of the honorable member, I will first remark, that I had supposed the word House was in use long before our Constitution was framed, and that it then had the same meaning that it now has. *But I may be mistaken.* If the definition here be correct, as I am constrained to think it is, the word House, as used in the Constitution, means that number of persons assembled in their legislative capacity, that are vested with constitutional power to do Legislative business—be that number fourteen or any other number. This course of reasoning has led me to this opinion, that the words whole House, mean the whole number sworn to try the cause. And if any of the Senators should not be competent to sit upon the trial, they should not be sworn, and therefore, would form no part of the House organized for this particular purpose. I am sat-

isfied that two-thirds of fourteen, would have power to convict and remove from office any officer tried before them, provided there was only that number sworn to try the cause; for the fourteen sworn, would constitute the whole House organized for that particular purpose; but if a greater number than fourteen were sworn, and took their seats as members of the House, at the time the House was organized for a particular purpose, they certainly would continue members of the House until discharged by the House; and consequently, must be included in the term whole House.

With this view of the case, it will be seen, that in my opinion, the Judge has not been convicted by a constitutional number. Still I have my doubts—tho' such however, is my opinion at present. At the suggestion of a friend, I was induced to write out, and cause to be published, my opinion, as some persons had intimated that the reason of my taking time to consider of this question, was not so much for the purpose of enabling me to think more correctly about it, as for another purpose. Gentlemen are licensed to draw their own conclusions.

OPINION OF MR. GRAVES,

On the constitutional number requisite to convict a Judge on Impeachment.

Being of the opinion twelve members of the court does not constitute the majority required by the constitution to convict a Judge, I will assign some of my reasons for this opinion.

The part of the constitution which relates to impeachments, says, "no person shall be convicted without the concurrence of two-thirds of the

whole House." The term whole House, is not used in any other part of the Constitution except in this article, and leaves it clear to my mind, that its framers intended to make it so plain and strong as not to be misunderstood. The Senate consists of twenty members; two thirds of that number is more than twelve, it is more than thirteen, it must then be fourteen; and I deem it proper to remark, that I am sustained in this opinion by a construction given to another section of the constitution, that it is not as well guarded as this, ever since the Senate consisted of twenty members —and in fact, ever since the Constitution was framed; that is, two thirds of each House shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized by law to compel the attendance of absent members; it never has been contended that a less number than two thirds of the members elected to either House, could constitute a quorum to do business, to wit: fourteen to form a quorum for the Senate, and twenty-eight for the House of Representatives, ever since the Senate and House of Representatives consisted of their present numbers; and how it can be understood as it was argued by the managers for the State, in this case, that two thirds of the House is fourteen, and two thirds of the whole House is only twelve, I am not able to discover; however, it was argued by the counsel for the State, that the whole House meant the Judicial House, and that two thirds of the members that were sworn on the court, were sufficient to convict. It might so happen that fourteen members would compose the court, and therefore, ten of them, only one half of the whole House would effect the removal of the highest Judicial officer in the State. Such a result was certainly never contemplated by the framers of our Constitution—such a state of things, it is hoped,

never will exist in this State. But even if the constitution would admit of the construction given it by the managers, that the members sworn on the trial were the whole House in this case, twelve would not be a sufficient number to convict; for the court was composed of nineteen members, and of course, a less number than thirteen, cannot be considered two thirds of the court. Another consideration worthy of notice, is, when we undertake to examine any part of our Constitution, we should endeavor to give it such a construction as would not involve us in difficulties. Then a fair and safe construction is, that the whole House here means the whole Senate, that fourteen of this number are sufficient to form a quorum to do business of any kind, and that these fourteen could form a court to try an impeachment, if the balance of the members are absent or not qualified to act; but that the whole of this fourteen must agree in their verdict, before they can convict, and that a less number than fourteen, is not a competent number to do business of any kind. Then suppose a court to be composed of fourteen members, and ten of them were to find a Judge guilty of high crimes and misdemeanors, and one of the other four was to take it in head to defeat the removal of the Judge, and absent himself or resign his seat, I would ask, how the other three could effect the removal of the Judge, when they could not form a quorum to do business of any kind.

Therefore, I must conclude, that it requires the concurrence of fourteen members to convict a Judge.

OPINION OF MR. CLEVELAND,
IN THE CASE OF JUDGE WILLIAMS.

Inasmuch as others have adopted the plan of giving their opinions in writing, on this case, I will briefly state the reasons by which I have been influenced in giving my decision.

The 1st Article relates to the failure of Judge Williams to hold the court at Monroe, which is charged against him as a wilful neglect of duty. The evidence on this subject has been so conclusive as to produce a unanimous vote of *acquittal*. I consider it therefore, unnecessary to enter into any detail on this part of the case.

The next articles related to alleged partiality by the Judge, in the trial of causes, and in his conduct towards certain attorneys practising before him. The decisions on these charges were also nearly unanimous in favor of the Judge; the evidence being sufficiently strong in his behalf, to explain such parts of his official conduct as seemed to require explanation.

The 4th, 5th and 6th articles, relating to the alleged corruption and misconduct of the Judge in taking the privy examination of Mrs. Taul out of court, permitting it to be certified as if done in court, and allowing that part of the minutes to be passed over without reading publicly—all which was alleged to be done with a view to aid Thomas P. Taul in committing a fraud in the transfer of real estate from his wife to himself. The facts upon which these charges are founded, are these: Thomas P. Taul, a lawyer at Winchester, was married to Caroline, a daughter of Col. Wm. P. Anderson; she had received from a distant relation when a child, a gift of a lot in Nashville, now become worth 8 or $10,000. Taul, the husband of this lady, when at Nashville, some time, perhaps a year previous to this transaction, had